

Conducting Criminal Background Checks

Guidance for Michigan schools and their partners



Michigan State Police Criminal Justice Information Center

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Please note: this document does not constitute legal advice. If you have concerns about legal liability, please consult your legal counsel. The Michigan State Police (MSP) have audit and enforcement authority over the criminal background checks you do run, but the Michigan Department of Education (MDE) has final authority on which checks you must run and what you must do to comply with your requirements under the Revised School Code.

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This document intentionally repeats many points so you do not need to flip between sections.

What is a criminal background check?

The Department of Michigan State Police (MSP) is Michigan's central repository for criminal history information, including arrests, charges, and convictions in Michigan. Other states do so similarly, and the Federal Bureau of Investigation (FBI) aggregates these records for national checks. A criminal background check determines whether the person in front of you appears in those criminal databases.

Criminal histories are built around fingerprints. Fingerprints are taken at the time of arrest, and later interactions with the criminal justice system build on those. The name given at arrest is also recorded, but the fingerprints must match for an arrest to be added to a record.

Criminal history searches can be performed by name or fingerprints. Schools can have fee-waived access to the Internet Criminal History Access Tool (ICHAT) website to check employees and volunteers (see page 8). ICHAT checks whether anyone with a matching name and date of birth has a criminal history in Michigan (no federal check). It does not ascertain identity, which is to say that ICHAT does not know if the person in question gave you a false name or date of birth. (Checking identification can minimize that.) No individual consent is needed for an ICHAT check, the search takes about a minute, and fees are waived for checking employees and volunteers.

Fingerprint-based criminal history checks may be run if there is legislation allowing or requiring them. The information is considered personal and private, and the default assumption is that nothing can be done with criminal history information unless the law explicitly allows it. For example, unless law explicitly allows reuse of fingerprint-based background check responses, a new background check would need to be run, even by the same agency for a new purpose or the same purpose by a new agency. (See page 7 for rules on sharing responses to school employment background checks.)

Fingerprint-based checks are more time consuming and costly, because you must submit fingerprints and wait for computers and technicians to compare them against the Michigan and national databases. They do ascertain identity or at least tell you that *this* person matches *these* arrest fingerprints, whatever name he may be using. Your response includes a national check.

Why do schools need to run criminal background checks?

As a safety measure, people with serious criminal records may not be fit to have responsibility for the safety and well being of children. As a practical matter, criminals are not always forthcoming about their criminal records. Legally, your school cannot have employees with certain criminal offenses.

MICHIGAN LAW (SHALL)

By Michigan law, all K-12 school employees (full time, part time, or under assignment to work regularly and continuously under contract) must have fingerprint-based criminal background checks. This covers both direct employees and contract employees. This can be found in Michigan Compiled Laws 380.1230 and its subsections. These can be found online at:

<http://legislature.mi.gov/doc.aspx?mcl-380-1230>

(Click the arrows in the upper-left of the page to move between MCL sections on the legislature website.) The key portions in terms of conducting the checks are MCL 380.1230 (state checks) and 1230a (federal checks). The federal checks required under MCL 380.1230a are under the authority of the Adam Walsh Child Protection and Safety Act of 2006:

<http://www.gpo.gov/fdsys/pkg/PLAW-109publ248/content-detail.html>

Michigan's fingerprinting system refers to these as "SE fingerprints," because the fingerprints will be submitted under fingerprinting reason SE (school employment). This tells the criminal history computers to apply the handling rules for school background checks. Those might vary for other laws. The codes are also how MSP notifies the FBI that a check is authorized under law.

FEDERAL LAW (MAY)

Under the National Child Protection Act (Public Law 103-209) and Volunteers for Children Act (Public Law 105-251), organizations (“qualified entities”) can request fingerprint-based background checks on employees and volunteers with unsupervised access to vulnerable populations (children, the elderly, or people with disabilities) for whom the organization provides care.

This is an option, not a requirement, and it covers most people who you would want to check that do not fall under the school employment requirement. Whether your school requires fingerprint-based background checks for pre-school, day care, student teaching, volunteering, etc. is a matter of school policy not state law.

Michigan’s fingerprinting system refers to these as “CPE fingerprints” and “CPV fingerprints,” because the fingerprints will be submitted under fingerprinting reason CPE (National Child Protection Act – employee) or CPV (NCPA/Volunteers for Children Act – volunteer). The most common shorthand for both laws is “NCPA,” even though both laws now cover more than children. There is no sharing provision for CPE or CPV checks. You can provide a “green light/red light” letter but not the actual results. A sample “green light” letter can be found at <http://www.michigan.gov/cjicats> (under “NCJA Forms and Templates,” “Generic Affidavit for Assignment”).

There is a small discount for volunteers’ fingerprint-based background checks (CPV). Interns and student teachers can be run as CPV. (Previous guidance stated that colleges could not use the CPV discount for student teachers. The FBI now allows that whether the check is run at the sending college or the receiving school.)

MICHIGAN LAW (MAY)

Schools also have the option of running fee-waived name-based checks on employees and volunteers through ICHAT (MCL 28.273). This covers any employee or volunteer, and no individual consent is needed. Schools can check every coach and every parent chaperoning a field trip. Please see page 8 for more details and restrictions.

OTHERS (SHALL NOT)

Fingerprints may not be submitted unless supported by one of the above laws, and fee-waived ICHAT access is available only for employees and volunteers. For example, delivery truck drivers or parents picking up children would not qualify for either.

Any school interested in checking anyone and everyone can establish a paid ICHAT account for that purpose. You do not need anyone’s consent to run his/her information there, although you will need an accurate date of birth to get useful results.

How do I run criminal background checks?

To run fingerprint-based criminal background checks, you need a Noncriminal Justice Agency User Agreement for Release of Criminal History Record Information (RI-087) with the Michigan State Police (MSP) and to designate a Local Agency Security Officer (CJIS-015). This will verify that you are authorized to receive criminal histories and will allow the MSP to set up an agency ID for your agency in the criminal history database (see “agency set-up (fingerprints),” page 5). Once an agency ID is issued, you can send applicants to have their fingerprints taken, and the responses will go wherever you requested in the user agreement. You can then determine if the employees/volunteers have any criminal offenses that would keep them from working with you.

To run fee-waived name-based criminal background checks, you will need an ICHAT agency code so that the computer knows not to charge you. See page 9. Once you have an agency code, you can register with ICHAT (or you can register and add the code afterwards). You can check your volunteers' names and dates of birth for criminal records in ICHAT. You can then determine if they have any criminal offenses that would keep them from working with you. (If you are paying for ICHAT checks of non-employees or -volunteers, you can skip the agency code step, register an e-mail address, and search whomever you like.)

AGENCY SET-UP (FINGERPRINTS)

Every known Michigan school is in the MSP database. If you are a new school (as recognized by the Revised School Code), do not yet have a user agreement for receiving criminal history information, or just want to update your agency contact information, there is a form for that. The RI-087 form (see page 29) is at <http://www.michigan.gov/cjicats> under "NCJA Forms and Templates." The first page of this form is all the information the MSP needs to send you the background check responses, and the later pages are the user agreement listing your responsibilities in receiving criminal history information.

Turnaround time is usually a few days. If you do not have an agency code a week after sending in an RI-087 form, please check your junk mail folder for something from ALIASResponse@michigan.gov. If the response is not in there, please e-mail MSP-CRD-APPLHELP@michigan.gov to ask for an update; the usual problem is that the e-mail went awry, as sometimes happens with attachments.

As part of this set-up, it is helpful if you can make sure that e-mails from ALIASResponse@michigan.gov are not deleted as spam. Adding the address to your address book could help, or if your IT department has a whitelist, please have them add ALIASResponse@michigan.gov. The criminal history responses are computer-generated, and some systems treat them as spam, especially if you have many checks done in a few days (such as the start of the school year).

If feasible, MSP recommends having these responses sent to a shared address such as HR@yourschool.edu. Having responses sent to a personal address means losing access to them if that person is out sick, quits, etc. The MSP also recommends against using free web services over which you have no management or security control.

School contractors are eligible for CPE and CPV checks under the National Child Protection Act but not SE checks under the Revised School Code and Adam Walsh Act. Federal regulations (28 CFR 906) bar providing the federal response to nongovernmental contractors, and Michigan law requires both a state and federal check. Schools' contract employees should be run under the school's agency ID; schools can provide contractors with a "green light" letter and can share the results directly with each other if a contract employee changes schools. A sample "green light" letter can be found at <http://www.michigan.gov/cjicats> (under "NCJA Forms and Templates," "Generic Affidavit for Assignment").

FINGERPRINTING SITES

There are many public and private fingerprinting sites around Michigan. A list of private vendors is available at <http://www.michigan.gov/lsvendor>

Some public agencies will also submit fingerprint images for you. Most law enforcement agencies have LiveScan devices. Not all of them capture fingerprints for employment background checks, and those that do may not do so at all times. Please call ahead and ask. (The technical term is "applicant fingerprinting," to distinguish it from the criminals they also fingerprint.)

Fingerprinting sites are allowed to charge for this service of collecting fingerprints. This is a free market, and prices vary between sites, as do quality, availability, etc. The State cannot recommend one site over another.

SUBMITTING FINGERPRINTS

Individuals will be submitting fingerprints electronically. A LiveScan device is like a small photocopier specialized for fingerprints. That device will send the fingerprint images to the MSP for processing. Every set of fingerprint images receives a Transaction Control Number (TCN) from the LiveScan device, which is how the system tracks each submission.

When your agency is set-up to receive responses from the criminal history system, you will be e-mailed an RI-030 form (see page 28 or http://www.michigan.gov/msp/0,1607,7-123-1645_3500_33838---.00.html) that individuals can take when being fingerprinted. It will have your agency's information prefilled for your convenience. The LiveScan operator needs certain information (listed on the form) to go with the fingerprints, notably your agency ID so that the MSP knows where to send the responses. Have your employee fill in his or her information and go to a fingerprinting site.

The RI-030 form is required for fingerprint submissions to document informed consent of what will be done with their fingerprints and how they can correct inaccurate records. You need a signature verifying that. This is an FBI requirement and may be enforced by state and federal auditors.

The intended process is:

1. Provide the RI-030 to employees and volunteers with your agency information filled in (Section I). If you have multiple fingerprinting reasons available, clearly indicate one, for example by deleting the others before printing, crossing them out, or circling one fingerprinting reason.
2. The individual enters his or her information in Section II and goes to be fingerprinted.
3. The fingerprinting site collects the fingerprint images and fills in Section III.
4. The individual returns the signed consent form to your agency. This provides your informed consent, and Section III has your transaction information in case anything goes wrong.

Because steps 2 and 3 are outside your control, but you still need that signed consent, some agencies have individuals file out Section II, sign the form, and copy it before sending them out. That ensures that you have a signed copy. It still helpful to have the individual report his or her TCN, to confirm that fingerprinting actually took place and to give you the tracking control number in case anything goes wrong.

You can change the instructions at the top of the RI-030 form from "After fingerprinting, return signed and completed form to employer or licensing agency" to whatever you want them to do.

If the fingerprint image quality is very poor or the accompanying data is irreconcilably wrong, the transaction may be rejected (by the MSP, not the FBI). In this case, the fingerprinting site should notify the individual that s/he needs to be reprinted. There should be no additional charge for this; the fingerprinting site is not charged by the MSP for rejects. If you have received any response from the MSP, the fingerprint images were not rejected, and the individual does not need to be re-fingerprinted.

Please note that the device assigns the TCN, not the MSP, so it is possible to have a TCN that the MSP never received or rejected due to data/quality errors. The process usually proceeds smoothly once fingerprint images are captured, but occasional transmission problems (such as an unplugged ethernet cord) can stop the process before anything reaches the MSP.

RECEIVING RESPONSES

Once the fingerprinting site sends the fingerprint images to the MSP, the images will be compared to images in the database. A good set of images may process in minutes. A bad set may require human intervention at multiple points and take much longer.

When processing is complete, you will receive an e-mail to the address you requested (on form RI-087). This will indicate whether the fingerprints matched any state or federal criminal history records. If not ("no hit"), this completes the background check: the record is clean.

If there is a criminal history (“hit”), it will be mailed to you. The e-mail will indicate this, and the criminal history (“rapsheet”) will be mailed the next business day. Unencrypted e-mail is not considered a secure means of sending private information.

You may receive an update e-mail. If the response indicates no Michigan criminal history but that there is a federal criminal history, the MSP will check the printout to make sure the FBI does not have an erroneous Michigan record. If an error is found and corrected before mailing, you will receive an e-mail from MSP-ALIASUpdate@michigan.gov with an updated response, usually from “no Michigan hit, federal record found” to “no Michigan hit, no federal hit.”

If the fingerprint image quality is marginal, it may pass the MSP standards but fall short of the FBI standards. That will be indicated where the federal criminal history result would be. The FBI allows the fingerprints to be resubmitted, in case the computer or a different manual technician can make them work on a second try. This will happen automatically with no intervention on your part.

If the second try at the FBI fails, the FBI will conduct a manual search. This means that the fingerprint images were too poor for the computers to tell whether or not there was a match, so the FBI will manually check several databases for potential name matches and have a human compare the fingerprints. This process currently averages a two-week backlog, although it has been as long as eight weeks. (This has sometimes been called a “name search,” but the name search is just the first part.)

The MSP recommends against using your e-mail inbox as a long term records storage option. Even the acknowledgment that no criminal history exists could be considered private information in some contexts. Think of your e-mail inbox like your physical inbox; you receive documents there, and they may reside there a while, but you move the personnel records to a locked cabinet (or a limited-access electronic folder) once you have finished processing.

SHARING RESPONSES

Sharing (“secondary dissemination”) is passing the criminal history to anyone outside your organization. The person fingerprinted agreed to disclose his/her criminal history to you. Your ability to pass that along to others is limited by state and federal law. Schools (including nonpublic schools and charter academies) can share the results of checks run under fingerprinting SE with each other. That sharing is limited to schools. There is no sharing provision under the National Child Protection Act (CPE, CPV). Where sharing is not available, you can always provide a “green light” letter indicating that someone is approved to work in Michigan schools. A sample “green light” letter can be found at <http://www.michigan.gov/cjicats> (under “NCJA Forms and Templates,” “Generic Affidavit for Assignment”). If the school employee is regularly and continuously employed (contract or otherwise) and changes jobs without a break in service, you have the option of requesting a copy of a previous background check rather than having them submit fingerprints for a new one. Please mark any copies with “COPY” when sharing.

When sharing responses, keep a dissemination log showing:

- the date
- who made the request (name and agency)
- whose record is being shared
- who sent the shared copy
- how the request was fulfilled (in-person, fax, mail, e-mail)

Retain logs for 365 days. Please keep the original request to show that you had written consent to disclose someone’s criminal history. An example secondary dissemination log is available at <http://www.michigan.gov/cjicats> (under “NCJA Forms and Templates”).

When receiving a shared criminal history response, you must run an ICHAT search (page 8) to check for any updates to the shared criminal history. This will supplement the rapback system (page 17) and is required by MCL 380.1230. If the ICHAT result is the same as the shared response, you have confirmation that this person has no new criminal offenses in Michigan. You have already positively

identified the person through the fingerprint-based response, so you can ignore approximate ICHAT matches that do not have include a matching name and date of birth.

You may share a copy of someone's criminal history with him/her (under any fingerprinting reason). When doing so, it is your responsibility to ensure that the request really is coming from that person, such as by verifying picture ID. You may wish to prove due diligence by making a photocopy. Some agencies have found it easiest to take their release form for sharing with other schools and have the individual list him/herself in place of a school. Remember to log this in your dissemination log. Please mark shared criminal histories with "COPY." You can also share a copy of ICHAT results with the individual; no logging is needed there. People have a right to confront and dispute criminal histories that affect their employment, so give them a chance to correct records before making hiring and firing decisions.

Do not accept a shared copy of a criminal history from an employee. This will not satisfy your legal requirements. (The MSP would also recommend having a policy against accepting a shared copy from the individual in question for non-required checks or always verifying on ICHAT.) If you would like to re-use a previous school employment background check, and this employee has not had a break in service before reaching you, please contact a previous school employer. You want it to come directly from the other school without passing through the hands of the individual in question. Always run an ICHAT check after receiving the shared response..

You can always confirm that someone passed a background check (or not), although under federal law you cannot explicitly say that a *criminal* or a *state/federal* background check was completed. You are allowed to tell anyone, "This person was/was not eligible for school employment as of [date]." You can even say that the person had nothing that would exclude him/her from working under MCL 380.1230a, which implicitly includes a criminal background check. You cannot go into further detail unless you would be allowed to share the entire record. This includes making a distinction between "no criminal history" and "has a record but it is not a problem"; it is a pass/fail. A sample "green light/red light" letter can be found at <http://www.michigan.gov/cjicats> (under "NCJA Forms and Templates," "Generic Affidavit for Assignment").

Do not send criminal histories through unencrypted e-mail. If e-mailing, use at least 128-bit encryption. If you are faxing a criminal history, make sure that the fax machine on the other end is somewhere secure or actively being watched for the fax, rather than sending private information to a fax checked by student office aides. The US Postal Service is considered a secure method of sharing.

NCJA OUTSOURCING AGREEMENTS

This section has been removed. Michigan law is not compliant with federal regulations (28 CFR 906) for outsourcing criminal history functions for schools. Under federal law, the authority to view any school employees' (contract or otherwise) criminal history belongs to the school, so contract employees should be checked under the school's agency ID.

ICHAT

As a government or non-profit agency, you are entitled (under MCL 28.273) to run fee-waived name-based background checks of your employees and volunteers through the ICHAT website:

<http://www.michigan.gov/ichat>

This provides a quick check before the time and expense of fingerprinting, and it allows you to check volunteers. You are also entitled to recheck current employees and volunteers, should you feel the need. ICHAT uses the MSP criminal history database, updating in real time. The MSP recommends against checking all potential volunteers at the start of the school year, because they may commit crimes between the day they submit their information and the day you have them chaperone a field trip.

ICHAT gives you somewhat less than what a fingerprint-based check provides.

- ICHAT checks are only as good as the data you enter. A typo can give you a false negative. Mismatched fingerprints are far rarer than typos.
- ICHAT is Michigan-only. Fingerprints include a federal check.
- "Open arrests" (no charges reported) will stop showing in ICHAT after one year. If charges were filed but no final disposition was reported, that will still show indefinitely.
- Juvenile cases do not show at all. Fingerprint-based checks include juvenile records.
- Convictions will show unless made nonpublic. This is the same as fingerprint-based checks.

ICHAT does not check the sex offender registry. It is possible to be a sex offender with no public Michigan criminal history. The Michigan public sex offender registry is at:

<http://www.mipsor.state.mi.us/>

and the national sex offender public website is at:

<http://www.nsopw.gov/>

Anyone can register an e-mail address with ICHAT and use the service. If you would like fee-waived access, you will need an agency code (either when you register or added after the fact). To receive an agency code, please send the following information on official letterhead (mailed, faxed, or scanned and e-mailed):

- the name, address, and phone number of your organization;
- the name and e-mail address of a contract person;
- the number of users and estimated number of fee-waived searches needed per year;
- the organization's federal tax ID number and, if you are not a public school, a copy of the IRS 501(c)3 documentation stating that you are a federally recognized non-profit and are entitled to waive the fees for government services.

Please e-mail to MSP-CRD-ACCTHELP@michigan.gov, fax to 517-241-0866, or mail to 333 S. Grand Avenue, PO Box 30634, Lansing, MI, 48909.

More than one person in your organization can register under your agency code, hence "the number of users." This will let multiple people check ICHAT for you.

Fee-waived ICHAT access is available only for checking employees and volunteers. Please keep documentation of employment of volunteering for six months from the time of the ICHAT check. The MSP conducts random audits of ICHAT searches to verify that fee-waived access is not being misused.

The ICHAT website includes tutorials, frequently asked questions, and other help. ICHAT help is available at MSP-CRD-ICHATHELP@michigan.gov or 517-241-0713.

How do I read a criminal history?

Now you have your criminal history responses, and some of your employees have criminal histories. Let us read what was sent to you. (A more visual tutorial is available at the ICHAT website.)

ARREST, CHARGE, JUDICIAL

There are three segments to a criminal history: arrest, charge, and judicial. Law enforcement officers arrest people, prosecutors charge them, and courts try them. An "incident" is one row covering all three steps.

Each incident will start with a header listing the incident date, name at arrest, and some tracking numbers.

Sample criminal history: test record.

CRIMINAL TRACKING NUMBER: 998749700201			INCIDENT DATE: 01/01/1987					
NAME USED: DOE,JOHN								
=====								
ARREST SEGMENT		:	CHARGE SEGMENT		:	JUDICIAL SEGMENT		
=====						:	=====	
DATE: 01/01/1987		:	NO DATA RECEIVED		:	DATE: 09/09/1987		
MI3313300		:			:	MI330055J		
INGHAM COUNTY SHERIFF		:			:	30TH CIRCUIT COURT		
DEPARTMENT		:			:	LANSING		
OCA: 12334		:			:	CFN: 14455		
1 CNT OF 3500		:			:			
FELONY		:			:	CNT-1 MCL 333.74032D		
DANGEROUS DRUGS		:			:	MISDEMEANOR		
DISP: CHGD BY PROSECUTOR		:			:	CONTROLLED		
		:			:	SUBSTANCE-POSSESSION		
		:			:	OF MARIJUANA		
		:			:	DISP: PLED GTY-MENT ILL		

ARREST SEGMENT

The left box of each incident is the arrest segment. It will list the date of arrest, the arresting agency, and what the arrest was for. Arrests are listed in broad "arrest file classes" rather than specific charges, such as "felony: dangerous drugs" rather than "delivery/manufacture of 5-45 kg of marijuana." The official charge may vary from what the officer on the scene saw as probable cause to arrest.

If the arrest segment reads "warrant requested," that means that the law enforcement agency made the arrest and asked the prosecutor's office to charge, rather than arresting someone on an existing warrant. It *does not* mean that there is a warrant for this person's arrest. "Petition required" is the juvenile equivalent. (It is possible for a record to say this even with a conviction, usually when the charge segment is missing.)

If the arrest segment reads, "NO DATA RECEIVED," that probably means that fingerprints were not submitted at arrest and the record was filled in later in the process. Do not worry about these rare events; you will see them only if there was a charge or conviction, so you have information on this incident.

CHARGE SEGMENT

The center box of each incident is the charge segment. It will list the date charges were filed, the charging prosecutor, and the specific charge. This should reference a specific statute, although older offenses may reference statutes that have been changed or repealed.

The charge segment may also say, "NO DATA RECEIVED." Prosecutors are not legally required to provide this data, and not all do. If the judicial segment is filled out, as with a missing arrest segment, you have what you need.

You will also see cases where both the charge and judicial segments have no data, an "open arrest." This means that the MSP did not hear what happened after the initial arrest. This is a data gap; it does not mean that there is a warrant or that charges were dropped. Please see the next section on "missing information."

JUDICIAL SEGMENT

The right box of each incident is the judicial segment. It will list the court date, the court hearing the case, the counts, the dispositions (guilty, not guilty, or otherwise), and sentences. It is not unusual for one

arrest to spread out to several charges/counts. It is also not unusual for only some of those counts to appear on the criminal history, the other charges having been dropped, dismissed, etc. A judicial segment with only count 2 or with counts 1 and 4 is unexceptional. (Having a “count 3” does not always mean that there were multiple counts or charges. If a court “edits” a charge by adding and deleting, the “count” may increase with just one charge.)

The offense listed in the arrest, charge, and judicial segments may not be the same. This is also common, usually with the offense becoming less severe as the case proceeds. Someone could be arrested for open murder, initially charged with manslaughter, and finally convicted of assault.

Judicial segments will frequently use unfamiliar terms. Some of these are:

- **Adjudicated:** juvenile offenses technically lead to adjudication rather than conviction. Juveniles are not considered to be fully responsible for their actions in a way that would lead to a criminal conviction. In practice, the criminal records system almost always treats a juvenile adjudication like a criminal conviction, but the distinction might matter for what your organization or legislation considers a disqualifying offense.
- **Bound over:** a district court may pass a case to circuit court. This is an intermediate, incomplete status. The circuit court has or will issue a final verdict. In practice, this is the same as having no judicial disposition, and if it is an old bind-over, the record should be updated with the final disposition.
- **Deferred:** a criminal conviction and sentence may be suspended. The defendant is typically given probation, and upon successful completion, the conviction will be dismissed. As of April 1, 2013, almost all deferrals are nonpublic under Michigan law, although you may still find some on federal records. A dismissed offense does not exclude someone from employment under the Revised School Code. Offenses are frequently deferred under “7411” (MCL 333.7411) or “HYTA” (the Holmes Youthful Trainee Act, MCL 762.11). Other deferral categories are more explicit, such as domestic violence or MIP (minor in possession of alcohol).
- **Nolo contendere:** “no contest.” The defendant accepts punishment without admitting guilt. This has the same practical effect as a guilty plea.

You may note that all of these are variations on “guilty” or “incomplete.” If charges were dropped or the person was not found guilty, the offense will not appear on the background check response. Arrests and convictions are public information, but if the MSP knows the case did not lead to a conviction, it is not part of the public criminal record.

FEDERAL

Federal criminal histories will display the same type of information but in a different format. There is no simple guide to this: the FBI and each state may have their own peculiarities, and they may change without notice. The MSP also cannot provide guidance on how other states’ offenses may be similar to or different from Michigan offenses with similar names.

Federal records may include duplicates. In most cases, the federal record will include a copy of the Michigan record. Other states may report individually as well as appearing on the FBI record, so you may see separate reports of the same offense.

The federal record can include Michigan incidents that were reported to the FBI but not the MSP, usually federal cases or arrests from before 1982. The federal record may also include items that should be nonpublic but still appear due to paperwork errors. Please give the individual a chance to check for and correct this before taking any negative employment action.

MISSING INFORMATION

The information provided to you is everything that the MSP have and can legally disclose. It may not be complete. Not all information makes its way to the MSP, or it may arrive in a way that cannot be matched with existing records.

The most common example is having a charge and/or judicial segment with “NO DATA RECEIVED.” That is an incomplete record. If it is a recent arrest, the case may not have gone to court. If it is an older arrest, the case was probably closed, but the results were not correctly added to the criminal history.

If your hiring decision could be affected by what happened in that case, you will want to find out whether charges were dropped, there was a conviction, etc. The fastest way to get that result is to ask the potential employee to provide documentation. Either they have it or they have a strong incentive to get it from the police/court.

Criminal history staff at the MSP are continuously updating and correcting criminal records. Because there are approximately 6,000 background checks per day, staff will not always be able to pursue individual cases in a timely manner, hence the recommendation to ask the employee for documentation. If you already have the documentation, however, it does not take long to verify the information and update the record. If you have an update or a correction, please fax it to (517) 241-0866. Please note on the cover letter that the employee provided the attached documents to update/correct his/her record, and you would like the updated response to be faxed/mailed to [your address/number], ATTN: [you]. Please include the original criminal history and the new documentation. Updating the record keeps this from happening to your employee again the next time someone runs a background check.

Please note that you should disregard the previous response after an update. The legal outcome is the same whether charges were dropped because they arrested the wrong person, or if a charge was dismissed as part of a plea bargain, or if a typo put someone else’s arrest on this person’s record. Not guilty is not guilty. If the employee goes into great detail or you have other documentation, that is your own affair, but as far as the criminal history goes, a deleted incident might as well never have existed.

If the incident would not affect your hiring decision (or their volunteering participation), it would still be polite to notify the individual of the open arrest and how to send us the documentation to correct it before it becomes a problem for them.

It is also possible to have an incident completely missing. If, for example, arrest fingerprints were never taken, or there was a problem with them, the final conviction cannot be added to the record unless fingerprints are taken after the fact. In this case, it would not appear on the record at all. If you have good reason to believe that a conviction should be on someone’s record, the MSP can pursue it by the same means as any other update. Please note that sometimes these incidents are correctly absent (see below), and other times they cannot be added immediately (as in the example where fingerprints are needed to show that *this* person’s record should have *this* conviction added).

You may be aware of incidents that (properly) do not appear on someone’s criminal history. Only criminal convictions will appear. Non-criminal offenses, such as traffic citations or local ordinance violations, are not part of a Michigan criminal history. (There are traffic misdemeanors such as drunk driving or vehicular manslaughter. Those do appear.) If you cannot go to jail for it, it is not a criminal offense. If it is a local ordinance with no state equivalent, it cannot appear on your state criminal history, even if it has jail time (for example, if your township were very serious about keeping dogs on leashes). If the maximum penalty is less than 93 days of jail, reporting is optional.

There are also many reasons to remove or suppress items from criminal histories. If the arrest never led to charges or a conviction, and that fact was reported, the arrest will be deleted in many cases and will be made nonpublic in the remaining cases. If you are arrested 20 times but are never charged or convicted, that will not appear on an employment background check. There are also several provisions under Michigan law to have convictions made nonpublic, a “second chance.” There is a general purpose second chance and more for individual offenses, so someone could potentially have had several “second chances.” The use of multiple second chances is rare, but it is not uncommon for someone to have been convicted and still have a clean record. In Michigan, these records are “suppressed” rather than “expunged”; an expunged record would be entirely deleted, whereas a suppressed record is made nonpublic except as allowed by law (often visible to law enforcement and courts). You must avoid re-

offending and then convince a judge that you deserve the second chance, so the suppressed items are usually minor offenses and “youthful indiscretions” rather than serious felonies.

You will also encounter people who say that something should not be on their record. This is sometimes true, and the MSP will gladly correct that. This is sometimes not true, no matter what the lawyer or the judge said. Juvenile records are not automatically sealed, and criminal incidents do not “go away” after several years the way that traffic tickets do.

If you are using ICHAT, open arrests older than one year will not appear, nor will juveniles’ open arrests. Those will appear on fingerprint-based checks, but the website does not consider that information “fair game.” Prosecutors’ charges with no judicial dispositions will still appear, no matter how old.

LIMITATIONS OF THE DATA

Criminal records are only as complete and accurate as the data reported. If something is not reported or is not reported in a way that lets it connect with someone’s record, it will not appear on that record. Typos happen.

The criminal history database overlaps with but does not entirely contain the sex offender registry. If you have concerns about out-of-state sex offenses or want to double-check Michigan offenses that somehow missed the criminal history, you can check the Michigan Public Sex Offender Registry for free at:

<http://www.mipsor.state.mi.us/>

You can also check the Michigan Department of Corrections records at:

<http://mdocweb.state.mi.us/otis2/otis2.html>

Any of the preceding details might also be “limitations” from your perspective. You might want to know that someone has been arrested 20 times (but never convicted) or has a suppressed conviction. Sorry. Michigan law calls for those to be removed from the public criminal history. The MSP takes your privacy seriously.

What next?

So now that you have your criminal history, what do you do with it?

DISQUALIFYING FACTORS

The purpose of the background check is to see if anything on the criminal history rules out this candidate for employment or volunteering. Michigan law includes a list of offenses that would rule someone out from employment. This is a minimum standard; if your school district policy is stricter, that is at your discretion. There is no such list for volunteers, so that is entirely a matter of your policy.

MCL 380.1230a(10) says that you cannot have an employee (or contract employee) who has committed a felony or any “listed offense,” where “listed offense” is defined by the sex offenders registration act (MCL 28.722). The relevant sections are in the appendix to this guide. Please remember that you must give the individual a chance to challenge or correct the record before taking action.

MISSING RESPONSES

Under normal circumstances, you will receive an e-mail almost immediately when someone submits fingerprints under your agency ID. Because there can be problems with fingerprint image quality or the accompanying data, please allow ten business days for processing. If you have not heard anything in that time, please e-mail MSP-CRD-APPLHELP@Michigan.gov. Please indicate that you had someone submit fingerprints and have not received a response. Please include the name and date of birth of the person fingerprinted, the fingerprinting reason code (SE/CPE/CPV), and your agency ID. If you have a

transaction control number (TCN), please include that. If you know when and where the fingerprinting took place, please include that as well.

If there is a criminal history, the e-mail will indicate that the rapsheet is being mailed. If that does not arrive within 10 business days, please forward the e-mail you received to MSP-CRD-APPLHELP@Michigan.gov with a note that you have not received the mailed rapsheet. Those can be re-generated and mailed. (Re-generating the responses will send the e-mail again.)

Occasionally, your e-mail will indicate that an FBI manual search is being conducted. This means that the fingerprint images were too poor for the computers to tell whether or not there was a match, so the FBI will manually check several databases for potential name matches and have a human compare the fingerprints. This process currently has a two-week backlog, although it has been as long as eight weeks. Those responses are not missing, just delayed.

If the fingerprints were of even worse quality, or the data was entered wrong, they might have been rejected immediately. In that case, the person will need to be re-fingerprinted. S/he should be notified by whoever took the fingerprints.

Common reasons for responses to be missing include:

- The fingerprints were never taken or were rejected for quality/data problems. The employee will need to be fingerprinted (again).
- A data entry error sent the results to the wrong place. This is why having the right agency ID is important. The computers will send the results to wherever is input. If that is not a valid ID, it will error out; if it is someone else's ID, the transaction will finish normally. No one will know where the results were supposed to go until you notify the MSP that they never arrived.
- A data entry error asked for the wrong kind of background check. If the person taking the fingerprints clicks something other than "SE," that could cause an error, and criminal history staff would try to figure out whether the code or the agency was wrong. Again, if enough things are wrong, the new combination could look right to the computer, and it would finish processing without sending the result to your agency. School employment checks have been incorrectly run as concealed pistol licenses and sex offender registrations. These can all be fixed, but if the original request made it through the system, no one may notice the problem until you mention that you did not receive results.
- Your e-mail address changed.
- An e-mail or piece of mail went astray. With thousands of requests per day, this happens every day with a 99.9% perfect system. The MSP can resend those responses.

Responses are stored in the database for six months. After that, all that the MSP will have is a record that the search was done, not what the response said. Please make sure that you have any expected responses before six months have passed, or else the employee will need to be fingerprinted (and pay) again.

If you are worried or wondering, MSP-CRD-APPLHELP@Michigan.gov can help you.

CORRECTIONS AND CHALLENGES

Before taking any action based on a background check, give the employee or volunteer a chance to verify and correct his/her record. Mistakes happen, and MSP criminal history staff stand ready to correct them. Previous sections list the assorted things that might have gone wrong. ICHAT "approximate matches" frequently offer you a "did you mean..." result that is not the person you are looking for. Give them the benefit of the doubt and a chance to clear their names. Please give the individual a copy of the response and ask them to verify or correct it.

CORRECTIONS – MICHIGAN

If you have a fingerprint-based check, rather than a named-based ICHAT check, corrections to individual items are more common than outright challenges to the entire record. These also arise from ICHAT checks. These are instructions for correcting a Michigan criminal history (not the FBI response).

The MSP keeps the central records but is not empowered to change them without the contributing agencies' say-so. Most of them can update records directly, or they can provide documentation of what the record should say. The employee or volunteer would then provide documentation from the court or arresting agency stating, for example, that no charges were pressed, that the case was dismissed, or what the sentence was. As with a challenge, the person seeking a correction should include a copy of the record being challenged, and it is helpful to note in the margin what corrections they are seeking ("this charge was dismissed, see attached"). Please have him/her include a request to send the school an updated background check, if desired. Please have him/her include contact information, in case there are questions. This can be faxed to 517-241-0866 (Attn: Record Correction) or mailed to:

Michigan State Police
CJIC-Criminal History
Attn: Record Correction
P. O. Box 30634
Lansing, MI, 48909

There may be some delay while criminal records staff verify the included documentation or seek further corrections.

The employee or volunteer may also say that something is entirely wrong, not that the case was dropped. For example, s/he was never arrested and convicted of murder; that must be someone else's incident on his/her record. This is alarming for the individual but usually straightforward to fix. The fingerprints for the questionable offense are on file, and they can be re-compared. The same mailing address and fax numbers work, as do the e-mail address MSP-CRD-CRIMHELP@michigan.gov and the help desk telephone at 517-241-0606. Please indicate the particulars under dispute, although everything would be rechecked in such a circumstance.

If a correction removes or changes a criminal history, you should disregard and destroy the original copy. Whether the item was removed because it was entirely in error or because it was supposed to have been nonpublic, it is no longer on the public criminal history and would not render this person unable to be hired under the Revised School Code. You cannot unsee what has been seen, but it is not an excludable offense, and according to Equal Employment Opportunity Commission guidelines you cannot hold it against the employee. If you have information available from other sources, including the candidate's statements, that will fall under your own policies rather than the legal requirement.

CORRECTIONS – FEDERAL

The FBI response can also be incomplete or inaccurate. If the offense was in Michigan, please follow the above instructions for correcting a Michigan record, and please note that it is the FBI record that needs to be corrected.

If the offense was in another state, contacting that state's record repository is usually the best first step for correcting the record. That will usually be the equivalent of the MSP, but it could be housed in a department of justice or elsewhere. An internet search for "[state] criminal history" will usually have the right organization on the first page of results (along with many private background check companies, so look for ".gov" or ".us").

If it was a federal offense, held only by the FBI rather than any state, the employee can contact the FBI directly. (This may also be necessary for some state offenses.) The FBI uses the term "challenge" for this. The website describing that process is:
<http://www.fbi.gov/about-us/cjis/criminal-history-summary-checks/challenge-of-a-criminal-history-summary>

At the time of writing, this says:

You may submit a Criminal History Summary challenge to the FBI's CJIS Division by writing to the following address:

FBI CJIS Division
Attention: Criminal History Analysis Team 1
1000 Custer Hollow Road
Clarksburg, WV 26306

Your written request should clearly identify the information that you feel is inaccurate or incomplete and should include copies of any available proof or supporting documentation to substantiate your claim. For example, if your disposition information is incorrect or missing, you may submit documentation obtained from the court having jurisdiction over the arrest or the office prosecuting the offense. The FBI will contact appropriate agencies in an attempt to verify or correct challenged entries for you. Upon receipt of an official communication from the agency with jurisdiction over the data, the FBI will make appropriate changes and notify you of the outcome.

Due to staffing levels, contacting the state office as a first step will usually produce faster results than contacting the FBI directly.

CHALLENGES

If you are using ICHAT, you may get an approximate match. Common names will have many chances for approximate matches – there are more than 500 “John Smith” records. Please note the highlighted differences from what you searched. The matching algorithm is programmed to check for near-hits, but it does not add differences to reach a “this is probably not him” result. For example, if you have Catherine A. Doe, born 04/03/1975, and the approximate match returns Kathryn L. Doe, born 05/30/1975, with a different race, and she is 9 inches taller with a different eye color, that is probably not the same person. If you have John Doe, born 01/12/1975, and it finds a record for Jack Doe, born 12/01/1975, that is the sort of near-hit for which (free) record challenges exist.

Your school may have its own policies, but there is no statewide policy on what is “close enough” that it demands a record challenge. If the results you have make you uncomfortable having this person around your children or students, feel free to have them submit fingerprints for a record challenge.

A record challenge is a chance for the person to provide fingerprints to prove that he is not *that* John Smith. The fingerprints will be compared to the criminal record. If they do not match, the MSP will provide official verification that, as of this date, this person does not have a criminal record (or at least *this* criminal record).

To perform a record challenge, the person in question should contact local law enforcement to be fingerprinted on an applicant card (call ahead to check availability). S/he should send the fingerprint card, a copy of the record being challenged (please give him/her a copy), and a letter indicating that this is a record challenge to:

Michigan State Police
CJIC-Criminal History
Attn: Record Challenge
P. O. Box 30634
Lansing, MI, 48909

Please include a return address in the letter. The MSP response will be a notarized letter verifying the clean record. (If the person fingerprinted has a *different* criminal history, that will be verified instead.)

If the employee had a fingerprint-based check and denies that the record found is his/hers, this process will not be helpful. The MSP can double-check the fingerprints; mistakes are possible. You or the individual can request that at MSP-CRD-APPLHELP@michigan.gov. Example: “Our employee John Smith, born 01/01/1980, had his fingerprints taken under TCN A123456789J01. They were matched to John Smith, born 05/25/1965, and the employee says that is not him. The SID listed is 12345K. Please ask the fingerprint technicians to double-check that match, and please either confirm the match or update

the fingerprint response.” If the fingerprints definitely match, please see “corrections” above for disputing whether an incident should be on your record (rather than “this is the wrong record”).

For challenging an FBI record, please see “corrections – federal” above.

DOCUMENT SECURITY

Criminal histories are personal information, governed by the most restrictive overlapping of your human resources policies and state and federal laws and regulations. The summary version is that if you request a criminal history and someone unauthorized sees it or gets a copy, that is your responsibility. All the security guidelines and requirements are giving you ways of keeping that from happening easily; it is not your fault if someone picks the lock on your HR files, but it is if you leave the files on a copier that the students use. You want only authorized personnel to have access to the criminal histories in your HR files.

The authoritative guide to what you must and must not do with criminal history information is the Criminal Justice Information Services (CJIS) Security Policy. A link (“FBI Criminal Justice Information Service (CJIS) Security Policy”) is available at <http://www.michigan.gov/cjicats>: or <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center/view>

Please feel free to read the whole thing, but document security standards are in “FBI CJIS Security Policy” Section 5, particularly 5.2 (Security Awareness Training), 5.8 (Media Protection), and 5.9 (Physical Protection). Additional sections will be relevant if you are storing electronic copies on a networked computer; an unsecured network is like a filing cabinet open to any visitor. You will find a copy of federal Appendix J at the back of this document; it is your reference guide to which rules apply in various situations.

Security Awareness Training (SAT) is a requirement, and it explains the other requirements. The MSP website hosts a Security Awareness Training template at <http://www.michigan.gov/cjicats> (“Training”). Instructions for using the template are provided on the first page, and there are spaces throughout to customize it for your agency. Please read carefully before administering training to agency personnel.

Some aspects of the Training may not apply to you because you are not a criminal justice agency. Throughout CJIS documents, you are a “noncriminal justice agency (NCJA).” Restrictions on you are lighter because you are receiving responses but do not have direct access to the criminal history data network.

RAPBACK

You can reuse SE responses because the criminal history database has a process called “rapback.” Rapback sends notification to the Michigan Department of Education (MDE) if anyone fingerprinted for school employment is arrested or convicted. The MDE then notifies the school if the updated criminal history renders this person unable to work in schools.

Please note that only a conviction (and only some of those) would render someone unable to work in schools, so it has not been MDE practice to send notice in the event of an arrest. Your school policies may be more restrictive, which the MDE would not know. Also, this should be redundant, because your employees are legally required to notify you, and you probably would have heard something by the time one of your employees was charged or convicted of a serious crime, to say nothing of when s/he did not show up due to jail/prison time. Rapback is more of a check after the fact.

Rapback is one reason why it is important to keep the Registry of Educational Personnel (REP list) or the Nonpublic School Personnel Report up to date. If you are sharing records, the MDE needs to know where to send notification of a conviction. The MDE consults the REP lists when forwarding rapback responses.

Because of the limitations of rapback, run an ICHAT check after receiving a shared criminal history response. (This is not a suggestion. MCL 380.1230(12)(c) requires it.) It is free, and you have the shared response to verify the identity. Please note that almost all approximate matches will be false positives in this case – you already have something saying that the record was clean as of date X, with that correct name and date of birth in the database. It is possible that an older conviction was added to the record after the original background check, but the name and date of birth will match (either on the main name or an alias) if it is the same person.

Please also note that updates on older convictions will trigger a rapback. This is sometimes confusing, but you would want to know if the record were found today that one of your new employees was convicted last year.

AUDITS

The MSP is required to audit all Michigan agencies receiving criminal history record information, ensuring that federal security and management controls are observed. The helpful, friendly auditors can help you better protect your employees' privacy and avoid liability. Audits provide a framework for policies and procedures necessary to protect CHRI confidentiality, security, and integrity, as well as preparing your agency in the event that the next Federal Bureau of Investigation audit selects you as one of the agencies to be checked.

You will receive notification (usually e-mail) in advance of an audit. The MSP auditors will have questions about what records you have, how you are keeping them, and what your policies and processes are. They will answer any questions you might have and help you come into better compliance with any legal requirements.

When auditors visit you, they will want to review the criminal history records you are keeping. For each background check, they will be looking for:

- Documentation that indicates criminal histories were requested for an authorized purpose under state or federal laws (i.e. employment application, new hire checklist, offer of employment)
- Written consent for the fingerprint-based background check (the RI-030 form);
- The e-mailed criminal history response and any mailed criminal record.

The MSP has authority over the records but not for the background check requirements themselves. Some questions will be deferred to your legal counsel or the authority of the MDE. This document and the audits are about what you do with the information you receive; the MDE has authority over the checks that you must make.

The auditors also conduct group trainings on all the procedures and requirements for conducting criminal history checks and receiving the responses. You can reach them at MSP-CJIC-ATS@michigan.gov. <http://www.michigan.gov/cjicats> has many useful documents and links.

What about my special circumstances?

Let us talk about how all this information applies to some common cases.

I am a school with contract employees.

Contract employees (including substitute teachers) must be fingerprinted under the agency ID of a school where they will be working. The contractor cannot receive criminal history record information, directly or via sharing. **This is a change from previous guidance.** The contracting company or contract employee should return the fingerprinting consent form (RI-030, see appendix) and documentation for why the check is being run, such as an e-mail listing which contract employees will be working at the school. It is

highly recommended that you communicate with your contracting companies about procedures for criminal history checks so you have shared expectations. If your school policy on excludable offenses is stricter than state law, be sure to make that explicit in your contract. Make sure to list those employees on your REP list so that the MDE will know where to send the rapback in the event of a future conviction.

You should notify your contracting company if an employee is or is not found eligible to work in Michigan schools. You can provide them with a “green light” letter, an example of which can be found at <http://www.michigan.gov/cjicats> (under “NCJA Forms and Templates,” “Generic Affidavit for Assignment”).

You may receive a “green light” letter for a contract employee who has worked at another Michigan school. It will list the agency holding the original criminal history response, and they can share it with you directly. Verify that record with an ICHAT check (see page 8).

If you receive a background check response on a contract employee who never ends up working at your school, please dispose of the document properly (delete, shred, etc.). If it was run erroneously under your agency ID, rather than a shared copy, please destroy it and record doing so as follows. You may want to wait a few days or contact your contractor in case you are about to receive notice of this new person. When destroying the message (delete or shred), log the date received and destroyed, the TCN and name on the background check, who received the history, who destroyed it, and how. Apologies for the inconvenience, but this is an uncommon case that needs an audit trail.

I am a contractor providing school staff.

Contract employees submit their background checks under the school’s agency ID. Contractors cannot receive criminal history record information, directly or via sharing. **This is a change from previous guidance.** It is highly recommended that you communicate with your contracting schools about procedures for criminal history checks so you have shared expectations. Make sure the school receiving the background check response knows about this contract employee. The school might otherwise delete or shred the response when they get what they believe to be a mis-directed response. Please do not send potential contract employees to be checked under the school’s agency ID “just in case” and hope that they hold onto the responses. The school will need a copy of the fingerprinting consent form (RI-030, see appendix) and documentation for why the check is being run, such as an e-mail listing which contract employees will be working at the school. You will want verification that the contract employee was accepted, such as a “green light” letter, an example of which can be found at <http://www.michigan.gov/cjicats> (under “NCJA Forms and Templates,” “Generic Affidavit for Assignment”).

Employees not working at a school may not be required to have fingerprint-based background checks. Please consult with the MDE and your legal counsel. The school can also extend its own, stricter requirements on what offenses exclude someone from employment.

I run a charter school.

Public school academies are explicitly the same as any other school under Michigan’s background check laws. This applies to the school, not a company managing the school. Please request and share criminal histories under the name and authority of the school. You are free to share background check responses with other schools in the same manner and with the same requirements as any other public or private school.

For criminal history purposes, a management company is a contracting company, distinct from the school itself, even if all the school employees are paid by the management company. The authority to receive and share criminal histories resides in the school, and the critical question is where an employee works not who s/he works for. **This is a change from previous guidance.** The school is the authorized entity to receive, review, and hold criminal histories.

Our school also runs a day care.

The school employment background check law covers only K-12 school education. Child care and preschool programs are not covered. Staff who also work with K-12 students must submit fingerprints under SE. Staff who will not be serving K-12 students are not covered by Michigan school employment fingerprinting requirements, and therefore neither need to nor can be fingerprinted under SE. Under the state law for child care organizations, employees of school-run child care or preschool programs are to be checked under ICHAT (see page 8). If school policy calls for these employees to receive a state and federal fingerprint-based criminal history check, that is available under the National Child Protection Act (fingerprinting reason CPE). If those employees later go on to work with K-12 students, they will still need the SE check to comply with MCL 380.1230a, as is the case with student teachers or anyone else checked under CPE, CPV, or any reason other than SE. (Because no law requires fingerprinting of preschool staff, there is no need to re-fingerprint SE-covered staff under CPE if K-12 staff move to preschool.)

If your day care licensee, designee, or program director is also a school employee who has been checked under SE, you do not need to have him/her rechecked to comply with the day care requirements (MCL 722.115c(7)). The Department of Human Services will need the TCN from the SE check to verify that the check was done. Band camp will fall under the same child care background check statutes.

If your licensee, designee, or program director is not also covered under school employment, you would check him/her under fingerprinting reason DCL. Use agency ID 10971L for day care, agency ID 88695H for any other child care such as band camp. This should be listed on your BCAL-1326 form for the Department of Human Services.

Note: if your day care staff are not fingerprinted under SE because they do not work with K-12 students, you must run an ICHAT prior to an offer of employment to be in compliance with your licensing requirements under MCL 722.115d.

I am a student teacher or intern.

There is no state law requiring that student teachers have a fingerprint-based background check. It is a matter of school or college/university policy.

You cannot receive a school employment background check if you do not have an offer of school employment. Fingerprints should be run under reason or CPV (National Child Protection Act – volunteer). (Previous guidance prescribed fingerprinting reason CPE if the college/university ran the check. The FBI no longer makes that distinction, so the CPV discount is available for all student teachers. CPE would still be a legally acceptable fingerprinting reason, but CPV may be slightly cheaper depending on your fingerprinting vendor.)

If you had a CPE/CPV background check done for student teaching (not K-12 school employment), this will not fulfill the requirements for the school employment background check when you become a teacher (substitute or otherwise). There is no sharing provision for CPE/CPV checks, and checks cannot be re-used for another purpose.

If you had a school employment offer and had a background check run under fingerprinting reason SE (for example as a substitute teacher), schools can share the results of that background check as described throughout this document.

While there is no sharing provision for CPE/CPV checks, colleges, universities, and schools can certainly provide a “green light” letter, an example of which can be found at <http://www.michigan.gov/cjicats> (under “NCJA Forms and Templates,” “Generic Affidavit for Assignment”). Colleges and universities can similarly attest to “good moral character” without stating that a state and federal criminal history check was completed.

Please check the policy of the receiving school before paying for fingerprinting. They may use a less expensive option like ICHAT.

My employee has requested a copy of his/her criminal history.

This applies to anyone on whom you have run an ICHAT or received a fingerprint-based response.

There is no legal objection to sharing an individual's criminal record with him/her. If they wish to challenge or correct the record, you definitely should. Otherwise, there are few practical benefits because responses cannot be re-used to meet other legal obligations. Under no circumstances should you accept a shared copy from an individual; this does not meet the legal requirements (a copy from a school or contract company would), and you run a risk of fraud if the record passes through the subject's hands before reaching you.

Keep a dissemination log for this and sharing with other schools. Indicate the following:

- the date
- who made the request (name and agency)
- whose record is being shared
- who sent the shared copy
- how the request was fulfilled (in-person, fax, mail, e-mail)

Retain logs for 365 days.

I cannot be fingerprinted due to disability.

The requirement for a fingerprint-based background check does not recognize that some people have no hands. Disability procedures exist.

If you can be fingerprinted at all, even poorly or with just a few fingers, please proceed normally. The fingerprinting site can note the missing or unprintable digits. If the images are too poor to be accepted, you may need to proceed as if completely unprintable. (Apologies if the fingerprint examiners call for re-prints or the MSP needs to check on claims of missing or unprintable fingers. There have been fingerprinting sites that tried to save time by claiming fingers were missing. This is not good for the integrity of the process.)

If you cannot be fingerprinted at all, you will need to visit local law enforcement to have a blank fingerprint card filled out on your behalf. Please call ahead to make sure of availability. An officer can verify your disability and fill out a paper card with your information, noting the reason why no fingerprint images were available. The officer would note "unprintable" in all fingerprinting boxes. Please mail the fingerprint card to the MSP, or have the school or police agency do so, with the fee of \$46.50 and a cover letter explaining the situation. (It is a rare event that requires special handling.) Please mail to:

Michigan State Police
CJIC-Criminal History
Attn: Applicant Background Check
P. O. Box 30634
Lansing, MI, 48909

This will take longer than usual and will necessarily be a name-based check.

FAQ

Q: What laws govern school employment background checks?

A: Michigan Compiled Laws 380.1230 through 380.1230g. These are available online at <http://www.legislature.mi.gov/> or <http://www.michiganlegislature.org>. Nationally, see the Adam Walsh Act, the National Child Protection Act, and the Volunteers for Children Act.

Q: When should our employees/contractors submit fingerprints?

A: Upon offer of employment. Do not have all potential candidates submit fingerprints, only successful candidates. Schools should receive copies of contract employees' responses when they will be serving at the school. You can run an ICHAT search on candidates or as a preliminary check; please refer to the challenge and correction section above on the chance for mistaken or approximate matches, and submitting fingerprints for the school employment check will subsume the challenge.

Q: Where can I submit fingerprint images?

A: Many local law enforcement agencies can help you (call ahead to check availability). There is also a private vendor list available at:
<http://www.michigan.gov/lsvendor>

Q: Where can someone from outside Michigan submit fingerprint images?

A: One company offers a service whereby nonresidents can mail them a fingerprint card to be fed into the system:
<http://www.l1enrollment.com/state/forms/mi/51a4e4b984310.pdf> Processing time is usually faster if the out-of-state fingerprints can be collected electronically and printed, rather than rolling inked fingerprints on a paper card. The electronic images are usually higher quality. Direct electronic transmission of fingerprints across state lines is being worked on but is not available as this document goes to print. If your inked fingerprints are rejected due to low image quality, we suggest trying a different fingerprinting site so that you do not get a second set of low quality fingerprints.

Q: How much does fingerprinting cost?

A: \$46.50 plus the vendor fee. Taking fingerprints and sending them to the MSP is a service, and anyone providing that service is welcome to charge whatever they like. If the cost seems high, or the quality low for the cost, you may wish to shop around between vendors or see if local law enforcement takes "applicant fingerprints."

<http://www.michigan.gov/lsvendor>

CPV (volunteer) fingerprints cost \$45.00.

Q: Are adult education teachers required to have a fingerprint-based background check?

A: No. The background check law applies to K-12 education. You are free to use ICHAT for them. If they will have unsupervised access to children, the elderly, or persons with disabilities, you may (not "shall") have them fingerprinted under the National Child Protection Act (CPE, or CPV for volunteers). If the adult education teachers are also teaching K-12, then you need to do the SE background check anyway, making the additional CPE check superfluous.

Q: What is the difference between CPE and CPV?

A: CPE is for employees, CPV is for volunteers. CPV receives a small discount in price (\$1.50). If you are this person's employer, use CPE. If this person is volunteering with you, including interns and student teachers, use CPV. If this is neither your employee nor your volunteer, such as the person who fills the vending machines in your school, neither applies, although the company that stocks the vending machines can run CPE, and you are free to demand that they do so (although they cannot share the response with you, just indicate that this person meets the requirements you specify, such as the school background check law).

Q: Can I have interns or student teachers fingerprinted under SE so that I can receive rapback (or to save them money)?

A: No. If you are also offering them paid or contract employment, go ahead, but only school employees and contract employees can be run under SE; they must be and no one else may be.

Q: Can our former intern or student teacher re-use the CPE/CPV response rather than being re-fingerprinted under SE?

A: No. Criminal history responses cannot be re-used across laws or fingerprinting reasons, both by statute and because different laws have different behind-the-scenes handling. SE has rapback and sharing provisions that CPE and CPV do not.

Q: Can our superintendent be fingerprinted under SE?

A: Yes, assuming your superintendent is an employee of the school district.

Q: Can our school board be fingerprinted under SE?

A: No. Board members are not employees of the school district.

Q: We ran a CPV check on a college student who had been volunteering with our school. He will soon be student teaching with us. Can we use the previous CPV response rather than re-fingerprinting?

A: Yes. CPV is the proper law/fingerprinting reason for both volunteers and student teachers (who would be considered volunteers from the school's perspective), so this is entirely unobjectionable. State law does not explicitly require fingerprint-based background checks of student teachers, so it is at your school's discretion what you accept/require. You are always free to run a fee-waived ICHAT check if you want to update your criminal background check results. Please note that if the student goes on to permanent employment or substitute teaching, the SE check is a separate requirement and would require new fingerprints.

Q: If the ISD, RESA, RESD, or ESA runs after school programs facilitated through the local school districts and an SE fingerprint is completed on those employees, can the local school district share the response with a contracting agency?

A: No. School units can share with each other, but they cannot share with contractors.

Q: Can my school share background check response with our student teachers' college or university?

A: No. There is not a sharing provision in the law behind CPE and CPV checks, and SE checks can only be shared with other K-12 schools for school employment purposes. You cannot even confirm that the record was clean. You can, however, send a "green light" letter, an example of which can be found at <http://www.michigan.gov/cjicats> (under "NCJA Forms and Templates," "Generic Affidavit for Assignment").

Q: What if a college or university also runs a school?

A: Even if they are doing business under the name of the college or university, when they are operating as a school administration, you may treat them as such. For example, Hillsdale College runs Hillsdale Academy, and you can share SE responses with them for school employment purposes. If one of your teachers needs a check for a course s/he is taking at Hillsdale College, that is not acting as a school administration, so you cannot share (and the shared SE response would probably not fulfill the requirement there anyway).

Q: What do I do if a school employee works in our school but is neither a direct nor contract employee of our school, for example a music teacher from School A "on loan" to School B without any formal contract or employment relationship at School B?

A: The recommended procedure is for School A to share the criminal history response along with the employee. School B is entitled to check employees working on-site and schools can share criminal history responses.

Q: Do students also working for a school need to be background checked?

A: Yes, but use ICHAT. MCL 380.1230 (13) makes exception for current students up to age 19 and special education students up to age 26. Run an ICHAT instead of fingerprints. The law does not specify

that it must be a student *of your school*, just that s/he still be enrolled as a pupil. Please note that ICHAT does not include juvenile records, but some offenses can be tried as adults.

Q: Can I give the employee a copy of his/her fingerprint response?

A: Yes. You may always share a copy with the employee. S/he will need a copy if s/he wishes to challenge or correct his/her criminal history. Please mark the shared copy with "COPY" and note it in your secondary dissemination log. No special requests or permissions are needed. Under no circumstances should you accept a response shared through an employee, rather than a school; beyond not meeting your legal requirement, it provides an opportunity to alter the records.

Q: What is "secondary dissemination"?

A: Giving the criminal history response to anyone else. Unless explicitly authorized by law, this is generally illegal. Sharing with the employee and other schools is allowed. You must log any secondary dissemination (who requested, who sent, whose record you sent).

Q: Are schools required to have a copy of fingerprint response for its contract employees?

A: Yes, this is required by Michigan law. Contract employees must be run under a school's agency ID. Federal law recognizes the authority to conduct fingerprint-based background checks as the school's, whether the employees are direct or through a contract.

Q: We are changing contractors for substitute teachers (or other employees). Some contract employees are moving to the new contractor. Do they need to be re-fingerprinted?

A: No. If you, the school, have a copy of the employee's criminal history response and the employee has not had a break in service (moved directly from one school employer to another), the fingerprinting has already been taken care of. Feel free to give the new contractor a "green light" letter certifying that the contract employee has already had a fingerprint-based criminal history check, an example of which can be found at <http://www.michigan.gov/cjicats> (under "NCJA Forms and Templates," "Generic Affidavit for Assignment").

Q: Can responses be shared with parochial schools, private schools, or charter schools?

A: Yes. A K-12 school is a K-12 school under the background check legislation.

Q: I ran a background check on John Doe when he worked for me. He now works for a contracting company. Can I share the response with them?

A: No, but you can share with the new school where he is a contract employee. You can also give them a "green light" letter, an example of which can be found at <http://www.michigan.gov/cjicats> (under "NCJA Forms and Templates," "Generic Affidavit for Assignment").

Q: What does "NO DATA RECEIVED" mean?

A: The MSP does not always know the final outcome of an arrest. It may not have been reported or at least not in a way that could be successfully matched with the original arrest. It is possible that no charges were filed or that the case was dismissed. It is also possible that there was a conviction. You may wish to ask an employee to provide documentation on what happened in that case; if you/they provide it to the MSP (see "corrections" above), the criminal history can be updated to prevent this from happening in the future.

Q: What if there is a mistake on the criminal history?

A: The MSP would be happy to verify and correct that. Please see "corrections" above, under "What Next?"

Q: How much does an ICHAT check cost?

A: \$0. ICHAT fees are waived for schools and nonprofits that wish to check their employees and volunteers. This includes parents chaperoning field trips or helping in the classroom. Please see the ICHAT section to apply for fee-waived ICHAT access. If you want to check someone other than an employee or volunteer, \$10 and do not use your fee-waived account log-in.

Q: Who can I run an ICHAT search on?

A: Volunteers and employees, including potential employees. If you would like to register under your personal e-mail address and pay for the searches, you can check anyone you like. Fee-waived access is audited to watch for recreational use. Please keep records of why you checked someone, such as a volunteering form or job application, for 6 months as your audit trail.

Q: Can I give a volunteer or employee a copy of the ICHAT search results?

A: Yes. If you find a criminal history, please do, because they may wish to correct it.

Q: What if the criminal history is for the wrong person?

A: The MSP would be happy to verify and correct that. Please see “challenges” above, under “What Next?” You may also want to re-read the ICHAT section concerning approximate matches; ICHAT will give you a “did you mean...” response if there is no exact match but someone similar in the database.

Q: Why did I get back Catherine A. Doe when I searched for Kathryn L. Doe on ICHAT? She has a different birthday and race.

A: When ICHAT fails to find an exact match for what you searched, it checks for an approximate match and offers that with the differences highlighted. It is possible to be just a little off on every field and get an obviously wrong “approximate match,” but the difference is not obvious to ICHAT. It lets you, the human, make that call. In this example, ICHAT re-checks for any birthday in the same year, for all races, for variant name spellings, and without the middle initial.

Q: How can we meet the Security Awareness Training requirement?

A: An example of a fully sufficient Training document is available at <http://www.michigan.gov/cjicats> “NCJA Security Awareness Training” under “Training.” You will need to customize it for your agency, and the blanks to fill in are noted throughout the presentation.

Q: Is there a mechanism in place to notify school districts of criminal convictions of staff reported on the Registry of Education Personnel (REP)?

A: Yes. Please see the “rapback” section above. For anyone with a “SE” school employment background check, automatic notice of an arrest or conviction is sent to the MDE. It has been the practice of the MDE to notify schools only in the event of a disqualifying offense, so no notice of arrests and not of all convictions will reach your school by this route.

Q: What do I do if I receive a criminal history for someone I have never heard of?

A: Destroy it and record doing so as follows. You may want to wait a few days or contact any company that sends you contract employees in case you are about to receive notice of this new person. When destroying the message (delete or shred), log the date received and destroyed, the TCN and name on the background check, who received the history, who destroyed it, and how. Apologies for the inconvenience, but this is a rare case that needs an audit trail. An example log can be found at <http://www.michigan.gov/cjicats> (under “NCJA Forms and Templates,” “Unknown CHRI Response Log”).

Q: Should criminal histories be included in responses to Freedom of Information Act (FOIA) requests?

A: Please consult your legal counsel. There are many possible interactions of FOIA, school, and criminal history laws, and they cannot be addressed adequately here. Criminal history information maintained by the FBI is protected by the federal Privacy Act (5 USC 552a), and its disclosure is prohibited absent consent from the individual or a statutory exception authorizing disclosure.

Q: What is a “red light/green light” letter?

A: Agencies can disclose the fact of passing or failing a background check even if they cannot share the actual responses. While you cannot give any details, you can say that a background check was completed and nothing was found making this person ineligible for employment in Michigan schools at of this date. You cannot explicitly say that a criminal history check was run, but you can say that they were found eligible under MCL 380.1230 and MCL 380.1230a.

Q: How do I update our contact information or e-mail address?

A: Please e-mail MSP-CRD-APPLHELP@michigan.gov and include your agency ID. If you do not have a user agreement (RI-087) on file yet, please use that. Fill it in, sign it, fax it, and solve two problems at once.

What if I have more questions?

Additional documents and FAQs are available at <http://www.michigan.gov/cjicats>

The criminal history help desk telephone line is 517-241-0606. They can help direct all questions.

For questions on background checks and the responses you receive (or fail to), please e-mail MSP-CRD-APPLHELP@michigan.gov.

For ICHAT-specific questions, please e-mail MSP-CRD-ICHATHELP@michigan.gov.

For questions about or corrections to the criminal history itself, please e-mail MSP-CRD-CRIMHELP@michigan.gov.

For audit-specific questions, please e-mail MSP-CJIC-ATS@michigan.gov.

NONCRIMINAL JUSTICE AGENCY (NCJA) LOCAL AGENCY SECURITY OFFICER (LASO) APPOINTMENT

AUTHORITY: 1974 PA 163; MCL 28.215, E.R.O. No. 2008-2, MCL 28.162, and R 28.5201. **COMPLIANCE:** MANDATORY

All noncriminal justice agencies (NCJA) that have access to Criminal History Record Information (CHRI), a subset of Criminal Justice Information, shall appoint a security point of contact known as a Local Agency Security Officer (LASO). The LASO can be, but is not required to be, the Agency's department head (e.g., superintendent or president).

A change in appointment of the LASO must be reported to the Michigan State Police Criminal Justice Information Center by returning this completed form to the address listed below or via the email submission button.

Send Completed Hard-Copy Form To: Michigan Department of State Police Criminal Justice Information Center ATTN: Audit and Training Section P.O. Box 30634 Lansing, MI 48913 OR: E-mail: MSP-CJIC-ATS@michigan.gov OR: Fax: (517) 241 - 0865	For Additional Information: FBI CJIS SECURITY POLICY Questions / Comments: Phone: (517) 241 - 0621
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I. LASO Information

Appointed LASO (First Name, Last Name, M.I.)	Agency Name	Agency ID	
Agency Address	City	State	Zip Code
Work Phone Number	Fax Number		
Email Address	Agency Head Name (First Name, Last Name, M.I.)		

II. Approval

Typed Name of Agency Head	Date
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SUBMIT VIA EMAIL

LIVESCAN FINGERPRINT REQUEST

AUTHORITY: MCL 28.214, MCL 28.273 & MCL 28.162; **COMPLIANCE:** Voluntary, however failure to complete this form will result in denial of request.

After fingerprinting, return signed and completed form to employer or licensing agency.

I. Fingerprint Reason					
1. Code					
2. Requestor/Agency ID		3. Agency Name			
II. Applicant Information: Type or clearly print answers to all fields before going to be fingerprinted.					
1a. Last Name		1b. First Name		1c. Middle Initial	1d. Suffix
2. Any Alternative Names, Last Names, or Aliases (Optional)					
3. Place of Birth (State or Country)		4. Date of Birth		5. Social Security Number (Optional)	
6. Driver License State		7. Driver License Number			
8. Address					
9. City		10. State		11. ZIP Code	
12. Sex	13. Race	14. Height (Ft. & In)	15. Weight (Lbs)	16. Eye Color	17. Hair Color
III. Live Scan Information: Type or clearly print answers to all fields at the fingerprinting site.					
1. Date Printed			2. Picture ID Type Presented		
3. TCN			4. Live Scan Operator		

I understand the personal information and fingerprints submitted by live scan are used to search against criminal identification records from both the Michigan State Police (MSP) and Federal Bureau of Investigation (FBI). I hereby authorize the release of any records to the person or agency listed above.

I further understand MSP and the FBI may also retain the submitted information and fingerprints as permitted by the Privacy Act of 1974, 5 USC § 552a, for routine uses beyond the principal purpose listed above. Routine uses include, but are not limited to, disclosures to governmental authorities responsible for civil or criminal law enforcement, counterintelligence, national security, or public safety.

Signature: _____ **Date:** _____

28 CFR §16.34- Procedure to obtain change, correction or updating of identification records.

If, after reviewing his/her identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he/she should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his/her challenge as to the accuracy or completeness of any entry on his/her record to the FBI, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D2, 1000 Custer Hollow Road, Clarksburg, WV 26306. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI CJIS Division will make any changes necessary in accordance with the information supplied by that agency.

**** ENSURE THAT THE CORRECT FINGERPRINTING REASON CODE AND AGENCY ID ARE USED. MSP WILL CHARGE FOR SECOND REQUESTS DUE TO INCORRECT CODES. ****

**NONCRIMINAL JUSTICE AGENCY USER AGREEMENT
FOR RELEASE OF CRIMINAL HISTORY RECORD INFORMATION**

between the

**MICHIGAN STATE POLICE
CRIMINAL JUSTICE INFORMATION CENTER**

This agency hereinafter shall be known as "MSP-CJIC"

and

Agency Name		Agency ID (if issued)	Government Agency <input type="checkbox"/> Yes <input type="checkbox"/> No
Address			
City	State	ZIP Code	
Contact Name (First, Middle, Last, Suffix) and Title			
Telephone Number () -	Fax () -	Email Address	
Email Address for criminal history responses, if different from contact email address			

This agency hereinafter shall be known as "User"

I. PURPOSE

This User Agreement is used to provide criminal history record information (CHRI) to employers, licensing agencies, and other agencies needing fingerprint-based criminal background checks.

Fingerprint-based criminal background checks must be explicitly mandated or allowed by law. National background checks must be authorized by federal law or a state statute approved by the U.S. Attorney General. The applying User is seeking background checks for:

Description of background check purpose (if employment or licensing, description of job and customers/clients served)	
If school: grades included	If private security, private detective, or burglar alarm company: LARA license number
Law requiring/allowing background checks, if known	

II. THE PARTIES AGREE AS FOLLOWS

The MSP-CJIC will:

1. Provide criminal history record information (CHRI) in response to fingerprint-based background checks, either to the User or to the appropriate agency that reviews criminal histories for the User.
2. Provide assistance to the User in interpreting CHRI.
3. Work to ensure the completeness and accuracy of the CHRI.
4. Conduct audits to assure compliance with this Agreement.

5. Cease providing information to the User if this Agreement is violated or if the User is suspected of violating this Agreement.

The User will:

1. Abide by the terms and conditions identified in this Agreement.
2. Comply with state and federal laws, rules, procedures, and policies, including those adopted by the state Criminal Justice Information Systems (CJIS) Board and national CJIC Policy Council regarding the use and dissemination of CHRI.
3. Use CHRI only for the purpose requested.
4. Provide for the security of any criminal history record information received. This includes, but is not limited to:
 - a. designate a Local Agency Security Officer who is responsible for ensuring compliance with security procedures and this User Agreement.
 - b. ensure that all personnel with access to criminal history information are aware of rules and responsibilities with regard to CHRI.
 - c. restrict access to physical or electronic copies of CHRI to authorized personnel. Physical copies shall be maintained in a controlled, secure environment such as a locked cabinet in a room not accessible to all staff and visitors. Electronic copies shall be protected with at least 128-bit encryption. The relevant federal encryption standard is FIPS 140-2.
 - d. share CHRI only when explicitly allowed by law and log any CHRI sharing (either sending or receiving). Logs shall include, at a minimum, the date, sending and receiving agencies, record shared, statutory authority to share CHRI, means of transmission, and person who disseminated.
 - e. track and report information security incidents such as the theft/loss of physical records or the penetration of electronic systems.
 - f. dispose of records securely. Physical media should be cross-shredded at a minimum, and electronic records should be deleted and repeatedly over-written with random 0s and 1s.
5. Understand that this data is based on CHRI received at the state repository. If a person could be adversely affected by this data, the person must be given the opportunity to challenge and correct a record before it is disseminated.
6. Retain audit records for at least 365 days. Once the minimum retention time period has passed, the agency shall continue to retain audit records until they are no longer needed for administrative, legal, audit, or other operational purposes such as Freedom of Information Act requests or legal actions.
7. Allow the MSP-CJIC to conduct audits to assure compliance with this Agreement.

III. CRIMINAL HISTORY RECORD INFORMATION LIMITATIONS

The User understands the Criminal History Record Information (CHRI) has the following limitations:

1. CHRI is defined and has three parts as follows:
 - a) The arresting agency's name and crime class under which the person was arrested. The arrest data submitted includes the mandatory field of name, race, sex, and date of birth. All arrests are accompanied by fingerprints.
 - b) The charge(s) issued by the prosecutor.
 - c) The name of the court that tried the case and the ultimate disposition of the case.

The arrest warrant file, sex offender file, or other databases maintained by the MSP are not part of the CHR record search.

2. CHRI is compiled from information submitted to the MSP-CJIC from law enforcement agencies, prosecutors, and courts (hereinafter referred to as contributing agencies). Although the MSP-CJIC makes reasonable efforts to ensure all information is submitted as required by law, it is not responsible for omissions from contributing agencies.
3. Although the Michigan Department of State Police encourages the reporting of all felonies, misdemeanors and arrests under local ordinances that substantially correspond to the State law, law enforcement

agencies are only required to report felonies and misdemeanors whose penalty can exceed 92 days confinement.

4. Before releasing information on individuals or taking adverse action against an individual listed on the CHR, the person in question must be afforded the opportunity to dispute and correct the record.
5. CHRI is constantly being updated as new arrests and other information are entered into the system by contributing agencies. The record released is only valid as of the date the record check was performed.
6. Certain statutes allow for the suppression or deletion of records, and this information is not provided.
7. The MSP-CJIC retains records for the State of Michigan only. Most fingerprinting reasons include a check through the Federal Bureau of Investigation, which the MSP-CJIC will request on the User's behalf as a normal part of the criminal background check, if allowed by law.

This Agreement commences on the date the last signature is obtained below and continues until terminated by either party. This Agreement may be terminated sooner by one or both parties upon 14-days written notice or immediately upon violation of the terms of the Agreement.

NONCRIMINAL JUSTICE AGENCY

Signature of Agency Representative	Date
Title	
Print or Type Name	

MICHIGAN DEPARTMENT OF STATE POLICE

Signature of CJIS Security Officer, Criminal Justice Information Center	Date
Print or Type Name Dawn Brinningstaul	

The "Agency Representative" must have the authority to commit the agency to the above security and audit requirements, typically the head of the organization or the relevant unit rather than the contact (from page one) who will be receiving the responses.

Submit completed Agreement via United States mail or e-mail as follows:

ATTENTION: Applicant Help
Michigan State Police
Criminal Justice Information Center
333 S. Grand Ave.
P.O. Box 30634
Lansing, Michigan 48909-0634

Telephone: (517) 241-0600
Fax: (517) 241-0866
E-mail: MSP-CRD-APPLHELP@michigan.gov

APPENDIX J NONCRIMINAL JUSTICE AGENCY SUPPLEMENTAL GUIDANCE

This supplemental guidance for noncriminal justice agencies (NCJA) is provided specifically for those whose only access to FBI CJIS data is authorized by legislative enactment or federal executive order to request civil fingerprint-based background checks for licensing, employment, or other noncriminal justice purposes, via their State Identification Bureau and/or Channeling agency. This guidance does not apply to criminal justice agencies covered under an active user agreement with the FBI CJIS Division for direct connectivity to the FBI CJIS Division via the FBI CJIS Wide Area Network. Examples of the target audience for this supplemental guidance include school boards, banks, medical boards, gaming commissions, alcohol and tobacco control boards, social services agencies, pharmacy boards, etc. The information below identifies the sections of the CJIS Security Policy most closely related to the NCJA's limited scope of interaction with CJI.

1. The following CJIS Security Policy sections comprise the minimum standard requirements in all situations:
 - a. 3.2.9 – Local Agency Security Officer (LASO)
 - b. 5.1.1.6 – Agency User Agreements
 - c. 5.1.1.7 – Security and Management Control Outsourcing Standard*
 - d. 5.1.3 – Secondary Dissemination
 - e. 5.2.1.1 – Security Awareness Training
 - f. 5.3 – Incident Response
 - g. 5.4.6 – Audit Record Retention
 - h. 5.8 – Media Protection
 - i. 5.9.2 – Controlled Area
 - j. 5.11 – Formal Audits **
 - k. 5.12 – Personnel Security***

* Note: Outsourcing Standard applies when contracting with channeling or outsourcing agency.

**Note: States shall periodically conduct audits of NCJAs. The FBI CJIS Division shall triennially conduct audits of a sampling of NCJAs.

*** Note: See the National Crime Prevention and Privacy Compact Council's Outsourcing Standard for Contractor background check requirements.

2. Agencies located within states having passed legislation authorizing or requiring civil fingerprint-based background checks for personnel with access to criminal history record information for the purposes of licensing or employment shall follow the guidance in section 5.12. Agencies located within states without this authorization or

requirement are exempted from the fingerprint-based background check requirement until such time as appropriate legislation has been written into law.

3. When receiving CJI via encrypted e-mail or downloading from a web-site and subsequently storing the information as an encrypted electronic image Authorized Recipients should, in addition to all of the aforementioned sections, focus on compliance with policy sections:
 - a. 5.5.2.4 – Access Control – Encryption
 - b. 5.6 – Identification and Authentication (web-site access)
 - c. 5.10.1.2 – System and Communications Protection – Encryption
4. When receiving CJI via e-mail or retrieving CJI from a website and subsequently storing the CJI electronically, Authorized Recipients should, in addition to 1.a–1.k above, focus on compliance with policy sections:
 - a. 5.5.2.4 – Access Control – Encryption
 - b. 5.6 – Identification and Authentication
 - c. 5.7 – Configuration Management
 - d. 5.10 – System and Communications Protection and Information Integrity
5. If an NCJA further disseminates CJI via encrypted e-mail to Authorized Recipients, located outside the NCJA’s designated controlled area, the NCJA should, in addition to 1.a–3.c above, focus on compliance with policy sections:
 - a. 5.7 – Configuration Management
 - b. 5.10 – System and Communications Protection and Information Integrity
6. If an NCJA further disseminates CJI via secure website posting to Authorized Recipients, located outside the NCJA’s designated controlled area, the NCJA should focus on all sections outlined in 1.a-4.d above.

THE REVISED SCHOOL CODE (EXCERPT)
Act 451 of 1976

380.1230 Offer of full-time, part-time, or contract employment; criminal history check; employment as conditional employee; conditions; voiding contract and terminating employment; position as substitute teacher or substitute bus drivers; report received by another district; consent; request; conducting criminal history check; report; disclosure of conviction of listed offense or felony; verification; use; disclosure; violation as misdemeanor; penalty; exception; verification information; definitions.

Sec. 1230. (1) Except as otherwise provided in this section, upon an offer of initial employment being made by the board of a school district or intermediate school district or the governing body of a public school academy or nonpublic school to an individual for any full-time or part-time employment or when school officials learn that an individual is being assigned to regularly and continuously work under contract in any of its schools, the district, public school academy, or nonpublic school shall request from the criminal records division of the department of state police a criminal history check on the individual and, before employing the individual as a regular employee or allowing the individual to regularly and continuously work under contract in any of its schools, shall have received from the department of state police the report described in subsection (8).

(2) If the board of a school district or intermediate school district or the governing body of a public school academy or nonpublic school determines it necessary to hire an individual or to allow an individual to regularly and continuously work under contract for a particular school year during that school year or within 30 days before the beginning of that school year, the board or governing body may employ the individual as a conditional employee or conditionally allow the individual to regularly and continuously work under contract under this subsection without first receiving the report described in subsection (8) if all of the following apply:

(a) The board or governing body requests the criminal history check required under subsection (1) before conditionally employing the individual or conditionally allowing the individual to regularly and continuously work under contract in any of its schools.

(b) The individual signs a statement identifying all crimes for which he or she has been convicted, if any, and agreeing that, if the report described in subsection (8) is not the same as the individual's statement, his or her employment contract is voidable at the option of the board or governing body. The department shall develop and distribute to districts and nonpublic schools a model form for the statement required under this subdivision. The department shall make the model form available to public school academies. A district, public school academy, or nonpublic school shall use the model form for the purposes of this subsection.

(3) If an individual is employed as a conditional employee under subsection (2) and the report described in subsection (8) is not the same as the individual's statement under subsection (2), the board or governing body may void the individual's employment contract. If an employment contract is voided under this subsection, the individual's employment is terminated, a collective bargaining agreement that would otherwise apply to the individual's employment does not apply to the termination, and the district, public school academy, or nonpublic school or the board or governing body is not liable for the termination.

(4) For an applicant for a position as a substitute teacher or substitute bus driver, or for an individual who regularly and continuously works under contract in more than 1 school district, intermediate school district, public school academy, or nonpublic school, if the applicant or individual agrees in writing to allow a district, public school academy, or nonpublic school to share the results of the criminal history check with another district, public school academy, or nonpublic school, then instead of requesting a criminal history check under subsection (1), a school district, intermediate school district, public school academy, or nonpublic school may use a report received by another district, public school academy, or nonpublic school or maintained by the department to confirm that the applicant or individual does not have any criminal history. If that confirmation is not available, subsection (1) applies to the applicant or individual.

(5) If an applicant is being considered for employment by more than 1 school district, intermediate school district, public school academy, or nonpublic school and if the applicant agrees in writing to allow a district, public school academy, or nonpublic school to share the report described in subsection (8) with another district, public school academy, or nonpublic school, a district, public school academy, or nonpublic school may satisfy the requirements of subsection (1) by obtaining a copy of the report described in subsection (8) from another district, public school academy, or nonpublic school.

(6) An applicant for employment shall give written consent at the time of application for the criminal records division of the department of state police to conduct the criminal history check required under this

section.

(7) A school district, intermediate school district, public school academy, or nonpublic school shall make a request to the criminal records division of the department of state police for a criminal history check required under this section on a form and in a manner prescribed by the criminal records division of the department of state police.

(8) Within 30 days after receiving a proper request by a school district, intermediate school district, public school academy, or nonpublic school for a criminal history check on an individual under this section, the criminal records division of the department of state police shall conduct the criminal history check and, after conducting the criminal history check and within that time period, provide a report of the results of the criminal history check to the district, public school academy, or nonpublic school. The report shall contain any criminal history record information on the individual maintained by the criminal records division of the department of state police. A school district, intermediate school district, public school academy, or nonpublic school that receives a report from the department of state police under this subsection shall retain that report in the individual's employment records.

(9) If the report received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (8), or a report received under section 1230a, 1230d(7), 1535a(15), or 1539b(15), discloses that an individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified, shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If the report received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (8), or a report received under section 1230a, 1230d(7), 1535a(15), or 1539b(15), discloses that an individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the governing board or governing body, if any, of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing. If a school district, intermediate school district, public school academy, or nonpublic school receives results described in this subsection, within 60 days after receiving those results the school district, intermediate school district, public school academy, or nonpublic school shall submit to the department in the form and manner prescribed by the department a report detailing the information and any action taken as a result by the school district, intermediate school district, public school academy, or nonpublic school. The department shall maintain a copy of this report for at least 6 years.

(10) Criminal history record information received from the criminal records division of the department of state police under subsection (8) shall be used by a school district, intermediate school district, public school academy, or nonpublic school only for the purpose of evaluating an individual's qualifications for employment or assignment in the position for which he or she has applied or been assigned and for the purposes of subsections (3), (4), (5), and (12). A member of the board of a district or of the governing body of a public school academy or nonpublic school or an employee of a district, public school academy, or nonpublic school shall not disclose the report or its contents received under this section, except a misdemeanor conviction involving sexual or physical abuse or any felony conviction, to any person who is not directly involved in evaluating the applicant's qualifications for employment or assignment. However, for the purposes of subsections (4) and (5), a person described in this subsection may confirm to an employee of another district, public school academy, or nonpublic school that a report under subsection (8) has revealed that an individual does not have any criminal history or may disclose that no report under subsection (8) has been received concerning the individual, and for the purposes of subsections (4), (5), and (12), a person described in this subsection may provide a copy of the report under subsection (8) concerning the individual to an appropriate representative of another district, public school academy, or nonpublic school. For an individual who is regularly and continuously working under contract, if the individual agrees in writing, a district, public school academy, or nonpublic school may provide a copy of the results received under this section concerning the individual to an appropriate representative of the individual's employer. A representative of the individual's employer who receives a copy of a report, or receives results of a report from another source as authorized by this subsection, shall not disclose the report or its contents or the results of the report to any person outside of the employer's business or to any of the employer's personnel who are not directly involved in evaluating the individual's qualifications for employment or assignment. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00, but

is not subject to the penalties under section 1804. As used in this subsection, "misdemeanor conviction involving sexual or physical abuse" includes, but is not limited to, a misdemeanor conviction for a listed offense; a misdemeanor conviction for violation of section 617a of the Michigan vehicle code, 1949 PA 300, MCL 257.617a; a misdemeanor conviction for violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701; a misdemeanor conviction for violation of section 81, 81a, 81c, 90c, 136b, 141a, 145, 145d, 145n, 233, 335a, or 411h of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.81c, 750.90c, 750.136b, 750.141a, 750.145, 750.145d, 750.145n, 750.233, 750.335a, and 750.411h; a misdemeanor conviction of section 6 of 1979 PA 53, MCL 752.796; or a misdemeanor conviction for violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(11) Subject to subsection (12), if the criminal history check required under this section has been completed for a particular individual and the results reported to a school district, intermediate school district, public school academy, or nonpublic school as provided under this section, then another criminal history check is not required under this section for that individual as long as the individual remains employed with no separation from service by any school district, intermediate school district, public school academy, or nonpublic school in this state or remains regularly and continuously working under contract with no separation from service for the same employer in any school district, intermediate school district, public school academy, or nonpublic school in this state. For the purposes of this subsection, an employee is not considered to have a separation from service in any of the following circumstances:

(a) The employee is laid off or placed on a leave of absence by his or her employer and returns to active employment with the same employer within 1 year after being laid off or placed on the leave of absence.

(b) The employee transfers to another school district, intermediate school district, public school academy, or nonpublic school and remains continuously employed by any school district, intermediate school district, public school academy, or nonpublic school in this state.

(12) If an individual described in subsection (11) is an applicant for employment in a different school district, intermediate school district, public school academy, or nonpublic school than the one that originally received the results of the criminal history check or that currently is in possession of the results of the criminal history check, or is being assigned to regularly and continuously work under contract in a different school district, intermediate school district, public school academy, or nonpublic school than the one that originally received the results of the criminal history check or that currently is in possession of the results of the criminal history check, then all of the following apply:

(a) If the results of the individual's criminal history check have not already been forwarded to the new school district, intermediate school district, public school academy, or nonpublic school, the new school district, intermediate school district, public school academy, or nonpublic school shall request the school district, intermediate school district, public school academy, or nonpublic school that has the results to forward them to the new school district, intermediate school district, public school academy, or nonpublic school. Upon receipt of such a request, a school district, intermediate school district, public school academy, or nonpublic school that has the results shall forward them to the requesting school district, intermediate school district, public school academy, or nonpublic school.

(b) If the results of the individual's criminal history check are not received by the new school district, intermediate school district, public school academy, or nonpublic school under this subsection or otherwise, then this section applies to the individual to the same extent as if he or she has had a separation from service.

(c) If the results of the individual's criminal history check are received by the new school district, intermediate school district, public school academy, or nonpublic school under this subsection or otherwise, then that school district, intermediate school district, public school academy, or nonpublic school shall perform a criminal history check on that individual using the department of state police's internet criminal history access tool (ICHAT), ensuring that this criminal history check is based on the personal identifying information, including at least the individual's name, sex, and date of birth, that was associated with the results received from the previous school district, intermediate school district, public school academy, or nonpublic school.

(d) If the search of the department of state police's ICHAT under subdivision (c) reveals that the individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If a search of the department of state police's ICHAT under subdivision (c) reveals that the individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using

public records and, if the information is verified using public records, shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body, if any, of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing.

(13) Subsection (1) does not apply to an individual who is being employed by or assigned to regularly and continuously work under contract in a school of a school district, intermediate school district, public school academy, or nonpublic school if the individual is not more than 19 years of age and is enrolled as a general education pupil of a school district, intermediate school district, public school academy, or nonpublic school or is not more than 26 years of age and is enrolled in special education programs or services in a school district, intermediate school district, public school academy, or nonpublic school. However, before employing the individual or assigning the individual to regularly and continuously work under contract in a school, the school district, intermediate school district, public school academy, or nonpublic school shall perform a criminal history check on that person using the department of state police's internet criminal history access tool (ICHAT). If a search of the department of state police's ICHAT reveals that the individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If a search of the department of state police's ICHAT reveals that the individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body, if any, of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing.

(14) For the purposes of subsections (9) and (13), the department shall make available to school districts, intermediate school districts, public school academies, and nonpublic schools information on how to verify a conviction using public records.

(15) As used in this section:

(a) "At school" means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) "Criminal history record information" means that term as defined in section 1a of 1925 PA 289, MCL 28.241a.

(c) "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(d) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(e) "Regularly and continuously work under contract" means any of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(f) "School property" means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

History: Add. 1992, Act 99, Imd. Eff. June 23, 1992;—Am. 1993, Act 68, Imd. Eff. June 21, 1993;—Am. 1993, Act 284, Eff. Apr. 1, 1994;—Am. 2005, Act 129, Eff. Jan. 1, 2006;—Am. 2006, Act 84, Imd. Eff. Mar. 31, 2006;—Am. 2006, Act 680, Imd. Eff. Jan. 10, 2007;—Am. 2008, Act 583, Imd. Eff. Jan. 16, 2009.

Popular name: Act 451

THE REVISED SCHOOL CODE (EXCERPT)
Act 451 of 1976

380.1230a Criminal records check through federal bureau of investigation; employment as conditional employee; voiding contract and terminating employment; application as substitute teacher or substitute bus drivers; obtaining copy of results from another district, public school academy, or nonpublic school; consent; form and manner of request; use and disclosure of results; violation as misdemeanor; penalty; definition; initiation of criminal records check by department of state police; disclosure that individual convicted of listed offense or other felony; verification; exception; verification information; definitions.

Sec. 1230a. (1) In addition to the criminal history check required under section 1230, the board of a school district or intermediate school district or the governing body of a public school academy or nonpublic school shall request the department of state police to conduct a criminal records check through the federal bureau of investigation on an applicant for, or an individual who is hired for, any full-time or part-time employment or who is assigned to regularly and continuously work under contract in any of its schools. Except as otherwise provided in this section, a board or governing body shall not employ an individual or allow an individual to regularly and continuously work under contract in any of its schools until after the board or governing body receives the results of the criminal records check. A board or governing body requesting a criminal records check under this section shall require the individual to submit his or her fingerprints to the department of state police for that purpose. The department of state police may charge a fee for conducting the criminal records check. Subject to section 1230g, a board or governing body shall require an individual to submit his or her fingerprints for the purposes of this section only at the time the individual initially applies for employment with the board or governing body or is initially employed by the board or governing body or is initially assigned to regularly and continuously work under contract in any of its schools.

(2) If the board of a school district or intermediate school district or the governing body of a public school academy or nonpublic school determines it necessary to hire an individual or to allow an individual to regularly and continuously work under contract for a particular school year during that school year or within 30 days before the beginning of that school year, the board or governing body may employ the individual as a conditional employee or conditionally allow the individual to regularly and continuously work under contract under this subsection without first receiving the results of the criminal records check under subsection (1) if all of the following apply:

(a) The board or governing body requests the criminal records check under subsection (1) before conditionally employing the individual or conditionally allowing the individual to regularly and continuously work under contract in any of its schools.

(b) The individual signs a statement identifying all crimes for which he or she has been convicted, if any, and agreeing that, if the results of the criminal records check under subsection (1) reveal information that is inconsistent with the individual's statement, his or her employment contract is voidable at the option of the board or governing body. The department shall develop and distribute to districts and nonpublic schools a model form for the statement required under this subdivision. The department shall make the model form available to public school academies. A district, public school academy, or nonpublic school shall use the model form for the purposes of this subsection.

(3) If an individual is employed as a conditional employee under subsection (2) and the results of the criminal records check under subsection (1) reveal information that is inconsistent with the individual's statement under subsection (2), the board or governing body may void the individual's employment contract. If an employment contract is voided under this subsection, the individual's employment is terminated, a collective bargaining agreement that would otherwise apply to the individual's employment does not apply to the termination, and the district, public school academy, or nonpublic school or the board or governing body is not liable for the termination.

(4) For an applicant for a position as a substitute teacher or substitute bus driver, or for an individual who regularly and continuously works under contract in more than 1 school district, intermediate school district, public school academy, or nonpublic school, if the applicant or individual agrees in writing to allow a district, public school academy, or nonpublic school to share the results of the criminal records check with another district, public school academy, or nonpublic school, then instead of requesting a criminal records check under subsection (1), a school district, intermediate school district, public school academy, or nonpublic school may use results received by another district, public school academy, or nonpublic school or maintained by the department to confirm that the applicant or individual does not have any criminal history. If that

confirmation is not available, subsection (1) applies to the applicant or individual.

(5) If an applicant is being considered for employment by more than 1 school district, intermediate school district, public school academy, or nonpublic school and if the applicant agrees in writing to allow a district, public school academy, or nonpublic school to share the results of the criminal records check with another district, public school academy, or nonpublic school, then a district, public school academy, or nonpublic school may satisfy the requirements of subsection (1) by obtaining a copy of the results of the criminal records check from another district, public school academy, or nonpublic school.

(6) An applicant for employment shall give written consent at the time of application for the criminal records division of the department of state police to conduct the criminal records check required under this section.

(7) A school district, intermediate school district, public school academy, or nonpublic school shall make a request to the department of state police for a criminal records check under this section on a form and in a manner prescribed by the department of state police.

(8) The results of a criminal records check under this section shall be used by a school district, intermediate school district, public school academy, or nonpublic school only for the purpose of evaluating an individual's qualifications for employment or assignment in the position for which he or she has applied or been assigned and for the purposes of subsections (3), (4), (5), and (12). A member of the board of a district or of the governing body of a public school academy or nonpublic school or an employee of a district, public school academy, or nonpublic school shall not disclose those results received under this section, except a misdemeanor conviction involving sexual or physical abuse or any felony conviction, to any person who is not directly involved in evaluating the individual's qualifications for employment or assignment. However, for the purposes of subsections (4), (5), and (12) a person described in this subsection may provide a copy of the results received under this section concerning the individual to an appropriate representative of another district, public school academy, or nonpublic school. For an individual who is regularly and continuously working under contract, if the individual agrees in writing, a district, public school academy, or nonpublic school may provide a copy of the results received under this section concerning the individual to an appropriate representative of the individual's employer. A representative of the individual's employer who receives a copy of the results, or receives the results from another source as authorized by this subsection, shall not disclose the results to any person outside of the employer's business or to any of the employer's personnel who are not directly involved in evaluating the individual's qualifications for employment or assignment. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00, but is not subject to the penalties under section 1804. As used in this subsection, "misdemeanor conviction involving sexual or physical abuse" includes, but is not limited to, a misdemeanor conviction for a listed offense; a misdemeanor conviction for violation of section 617a of the Michigan vehicle code, 1949 PA 300, MCL 257.617a; a misdemeanor conviction for violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701; a misdemeanor conviction for violation of section 81, 81a, 81c, 90c, 136b, 141a, 145, 145d, 145n, 233, 335a, or 411h of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.81c, 750.90c, 750.136b, 750.141a, 750.145, 750.145d, 750.145n, 750.233, 750.335a, and 750.411h; a misdemeanor conviction of section 6 of 1979 PA 53, MCL 752.796; or a misdemeanor conviction for violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(9) Within 30 days after receiving a proper request by a school district, intermediate school district, public school academy, or nonpublic school for a criminal records check on an individual under this section, the criminal records division of the department of state police shall initiate the criminal records check through the federal bureau of investigation. After conducting the criminal records check required under this section for a school district, intermediate school district, public school academy, or nonpublic school, the criminal records division of the department of state police shall provide the results of the criminal records check to the district, public school academy, or nonpublic school. A school district, intermediate school district, public school academy, or nonpublic school that receives results from the department of state police under this subsection shall retain those results in the individual's employment records.

(10) If the results received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (9), or a report received under section 1230, 1230d(7), 1535a(15), or 1539b(15), disclose that an individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified, shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If the results received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (9), or a report received under section

1230, 1230d(7), 1535a(15), or 1539b(15), disclose that an individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the governing board or governing body, if any, of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing. If a school district, intermediate school district, public school academy, or nonpublic school receives results described in this subsection, within 60 days after receiving those results the school district, intermediate school district, public school academy, or nonpublic school shall submit to the department in the form and manner prescribed by the department a report detailing the information and any action taken as a result by the school district, intermediate school district, public school academy, or nonpublic school. The department shall maintain a copy of this report for at least 6 years.

(11) Subject to subsection (12), if the criminal records check required under this section has been completed for a particular individual and the results reported to a school district, intermediate school district, public school academy, or nonpublic school as provided under this section, then another criminal records check is not required under this section for that individual as long as the individual remains employed with no separation from service by any school district, intermediate school district, public school academy, or nonpublic school in this state or remains regularly and continuously working under contract with no separation from service for the same employer in any school district, intermediate school district, public school academy, or nonpublic school in this state. For the purposes of this subsection, an employee is not considered to have a separation from service in any of the following circumstances:

(a) The employee is laid off or placed on a leave of absence by his or her employer and returns to active employment with the same employer within 1 year after being laid off or placed on the leave of absence.

(b) The employee transfers to another school district, intermediate school district, public school academy, or nonpublic school and remains continuously employed by any school district, intermediate school district, public school academy, or nonpublic school in this state.

(12) If an individual described in subsection (11) is an applicant for employment in a different school district, intermediate school district, public school academy, or nonpublic school than the one that originally received the results of the criminal records check or that currently is in possession of the results of the criminal records check, or is being assigned to regularly and continuously work under contract in a different school district, intermediate school district, public school academy, or nonpublic school than the one that originally received the results of the criminal records check or that currently is in possession of the results of the criminal records check, then all of the following apply:

(a) If the results of the individual's criminal records check have not already been forwarded to the new school district, intermediate school district, public school academy, or nonpublic school, the new school district, intermediate school district, public school academy, or nonpublic school shall request the school district, intermediate school district, public school academy, or nonpublic school that has the results to forward them to the new school district, intermediate school district, public school academy, or nonpublic school. Upon receipt of such a request, a school district, intermediate school district, public school academy, or nonpublic school that has the results shall forward them to the requesting school district, intermediate school district, public school academy, or nonpublic school.

(b) If the results of the individual's criminal records check are not received by the new school district, intermediate school district, public school academy, or nonpublic school under this subsection or otherwise, then this section applies to the individual to the same extent as if he or she has had a separation from service.

(13) Subsection (1) does not apply to an individual who is being employed by or assigned to regularly and continuously work under contract in a school of a school district, intermediate school district, public school academy, or nonpublic school if the individual is not more than 19 years of age and is enrolled as a general education pupil of a school district, intermediate school district, public school academy, or nonpublic school or is not more than 26 years of age and is enrolled in special education programs or services in a school district, intermediate school district, public school academy, or nonpublic school. However, before employing the individual or assigning the individual to regularly and continuously work under contract in a school, the school district, intermediate school district, public school academy, or nonpublic school shall perform a criminal history check on that person using the department of state police's internet criminal history access tool (ICHAT). If a search of the department of state police's ICHAT reveals that the individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity, as provided under section

1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If a search of the department of state police's ICHAT reveals that the individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing.

(14) For the purposes of subsections (10) and (13), the department shall make available to school districts, intermediate school districts, public school academies, and nonpublic schools information on how to verify a conviction using public records.

(15) As used in this section:

(a) "At school" means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(c) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(d) "Regularly and continuously work under contract" means any of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(e) "School property" means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

History: Add. 1995, Act 83, Eff. Aug. 1, 1995;—Am. 2005, Act 138, Eff. Jan. 1, 2006;—Am. 2006, Act 84, Imd. Eff. Mar. 31, 2006;—Am. 2006, Act 680, Imd. Eff. Jan. 10, 2007;—Am. 2008, Act 583, Imd. Eff. Jan. 16, 2009.

Popular name: Act 451

SEX OFFENDERS REGISTRATION ACT (EXCERPT)
Act 295 of 1994

28.722 Definitions.

Sec. 2. As used in this act:

(a) "Aircraft" means that term as defined in section 2 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.2.

(b) "Convicted" means 1 of the following:

(i) Having a judgment of conviction or a probation order entered in any court having jurisdiction over criminal offenses, including, but not limited to, a tribal court or a military court, and including a conviction subsequently set aside under 1965 PA 213, MCL 780.621 to 780.624.

(ii) Either of the following:

(A) Being assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, before October 1, 2004. This sub-subparagraph does not apply if a petition was granted under section 8c at any time allowing the individual to discontinue registration under this act, including a reduced registration period that extends to or past July 1, 2011, regardless of the tier designation that would apply on and after that date.

(B) Being assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, before October 1, 2004 if the individual is convicted of any other felony on or after July 1, 2011.

(iii) Having an order of disposition entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, that is open to the general public under section 28 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.28, if both of the following apply:

(A) The individual was 14 years of age or older at the time of the offense.

(B) The order of disposition is for the commission of an offense that would classify the individual as a tier III offender.

(iv) Having an order of disposition or other adjudication in a juvenile matter in another state or country if both of the following apply:

(A) The individual is 14 years of age or older at the time of the offense.

(B) The order of disposition or other adjudication is for the commission of an offense that would classify the individual as a tier III offender.

(c) "Custodial authority" means 1 or more of the following apply:

(i) The actor was a member of the same household as the victim.

(ii) The actor was related to the victim by blood or affinity to the fourth degree.

(iii) The actor was in a position of authority over the victim and used this authority to coerce the victim to submit.

(iv) The actor was a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person was enrolled.

(v) The actor was an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person was enrolled, or was a volunteer who was not a student in any public school or nonpublic school, or was an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor used his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(vi) That other person was under the jurisdiction of the department of corrections and the actor was an employee or a contractual employee of, or a volunteer with, the department of corrections who knew that the other person was under the jurisdiction of the department of corrections and used his or her position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact.

(vii) That other person was under the jurisdiction of the department of corrections and the actor was an employee or a contractual employee of, or a volunteer with, a private vendor that operated a youth correctional facility under section 20g of the corrections code of 1953, 1953 PA 232, MCL 791.220g, who knew that the other person was under the jurisdiction of the department of corrections.

(viii) That other person was a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor was an employee or a contractual employee of, or a volunteer with, the county or the department of corrections who knew that the other person was under the county's jurisdiction and used his or her position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact.

(ix) The actor knew or had reason to know that a court had detained the victim in a facility while the victim was awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor was an employee or contractual employee of, or a volunteer with, the facility in which the victim was detained or to which the victim was committed.

(d) "Department" means the department of state police.

(e) "Employee" means an individual who is self-employed or works for any other entity as a full-time or part-time employee, contractual provider, or volunteer, regardless of whether he or she is financially compensated.

(f) "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 174, MCL 761.1.

(g) "Immediately" means within 3 business days.

(h) "Indigent" means an individual to whom 1 or more of the following apply:

(i) He or she has been found by a court to be indigent within the last 6 months.

(ii) He or she qualifies for and receives assistance from the department of human services food assistance program.

(iii) He or she demonstrates an annual income below the current federal poverty guidelines.

(i) "Institution of higher education" means 1 or more of the following:

(i) A public or private community college, college, or university.

(ii) A public or private trade, vocational, or occupational school.

(j) "Local law enforcement agency" means the police department of a municipality.

(k) "Listed offense" means a tier I, tier II, or tier III offense.

(l) "Minor" means a victim of a listed offense who was less than 18 years of age at the time the offense was committed.

(m) "Municipality" means a city, village, or township of this state.

(n) "Registering authority" means the local law enforcement agency or sheriff's office having jurisdiction over the individual's residence, place of employment, or institution of higher learning, or the nearest department post designated to receive or enter sex offender registration information within a registration jurisdiction.

(o) "Registration jurisdiction" means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the United States Virgin Islands, American Samoa, and the Indian tribes within the United States that elect to function as a registration jurisdiction.

(p) "Residence", as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. If a person is homeless or otherwise lacks a fixed or temporary residence, residence means the village, city, or township where the person spends a majority of his or her time. This section shall not be construed to affect existing judicial interpretation of the term residence for purposes other than the purposes of this act.

(q) "Student" means an individual enrolled on a full- or part-time basis in a public or private educational institution, including, but not limited to, a secondary school, trade school, professional institution, or institution of higher education.

(r) "Tier I offender" means an individual convicted of a tier I offense who is not a tier II or tier III offender.

(s) "Tier I offense" means 1 or more of the following:

(i) A violation of section 145c(4) of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(ii) A violation of section 335a(2)(b) of the Michigan penal code, 1931 PA 328, MCL 750.335a, if a victim is a minor.

(iii) A violation of section 349b of the Michigan penal code, 1931 PA 328, MCL 750.349b, if the victim is a minor.

(iv) A violation of section 520e or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g, if the victim is 18 years or older.

(v) A violation of section 539j of the Michigan penal code, 1931 PA 328, MCL 750.539j, if a victim is a minor.

(vi) Any other violation of a law of this state or a local ordinance of a municipality, other than a tier II or tier III offense, that by its nature constitutes a sexual offense against an individual who is a minor.

(vii) An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in section 10a of the Michigan penal code, 1931 PA 328, MCL 750.10a.

(viii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (vii).

(ix) An offense substantially similar to an offense described in subparagraphs (i) to (viii) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

(t) "Tier II offender" means either of the following:

(i) A tier I offender who is subsequently convicted of another offense that is a tier I offense.

(ii) An individual convicted of a tier II offense who is not a tier III offender.

(u) "Tier II offense" means 1 or more of the following:

(i) A violation of section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a.

(ii) A violation of section 145b of the Michigan penal code, 1931 PA 328, MCL 750.145b.

(iii) A violation of section 145c(2) or (3) of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(iv) A violation of section 145d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.145d, except for a violation arising out of a violation of section 157c of the Michigan penal code, 1931 PA 328, MCL 750.157c.

(v) A violation of section 158 of the Michigan penal code, 1931 PA 328, MCL 750.158, committed against a minor unless either of the following applies:

(A) All of the following:

(I) The victim consented to the conduct constituting the violation.

(II) The victim was at least 13 years of age but less than 16 years of age at the time of the violation.

(III) The individual is not more than 4 years older than the victim.

(B) All of the following:

(I) The victim consented to the conduct constituting the violation.

(II) The victim was 16 or 17 years of age at the time of the violation.

(III) The victim was not under the custodial authority of the individual at the time of the violation.

(vi) A violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, committed against an individual 13 years of age or older but less than 18 years of age. This subparagraph does not apply if the court determines that either of the following applies:

(A) All of the following:

(I) The victim consented to the conduct constituting the violation.

(II) The victim was at least 13 years of age but less than 16 years of age at the time of the violation.

(III) The individual is not more than 4 years older than the victim.

(B) All of the following:

(I) The victim consented to the conduct constituting the violation.

(II) The victim was 16 or 17 years of age at the time of the violation.

(III) The victim was not under the custodial authority of the individual at the time of the violation.

(vii) A violation of section 448 of the Michigan penal code, 1931 PA 328, MCL 750.448, if the victim is a minor.

(viii) A violation of section 455 of the Michigan penal code, 1931 PA 328, MCL 750.455.

(ix) A violation of section 520c, 520e, or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520c, 750.520e, and 750.520g, committed against an individual 13 years of age or older but less than 18 years of age.

(x) A violation of section 520c committed against an individual 18 years of age or older.

(xi) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (x).

(xii) An offense substantially similar to an offense described in subparagraphs (i) to (xi) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

(v) "Tier III offender" means either of the following:

(i) A tier II offender subsequently convicted of a tier I or II offense.

(ii) An individual convicted of a tier III offense.

(w) "Tier III offense" means 1 or more of the following:

(i) A violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, committed against an individual less than 13 years of age.

(ii) A violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349, committed against a minor.

(iii) A violation of section 350 of the Michigan penal code, 1931 PA 328, MCL 750.350.

(iv) A violation of section 520b, 520d, or 520g(1) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520d, and 750.520g. This subparagraph does not apply if the court determines that the victim consented to the conduct constituting the violation, that the victim was at least 13 years of age but less than 16 years of age at the time of the offense, and that the individual is not more than 4 years older than the victim.

(v) A violation of section 520c or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520c and 750.520g, committed against an individual less than 13 years of age.

(vi) A violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, committed by an individual 17 years of age or older against an individual less than 13 years of age.

(vii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (vi).

(viii) An offense substantially similar to an offense described in subparagraphs (i) to (vii) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

(x) "Vehicle" means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.

(y) "Vessel" means that term as defined in section 44501 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.44501.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2005, Act 301, Eff. Feb. 1, 2006;—Am. 2011, Act 17, Eff. July 1, 2011.